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Aff'd

SUPREME COURT OF THE UNITED STATES.

No. 185.

PHILADELPHIA BAR ASSOCIATION

WILLIAM IMHAEUSER, APPELLANT,

vs.

JACOB E. BUERK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

FILED SEPTEMBER 25, 1877.

SUPREME COURT OF THE UNITED STATES.

No. 185.

WILLIAM IMHAEUSER, APPELLANT,

vs.

JACOB E. BUERK.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK.

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1 The President of the United States of America to William Imhaeuser, Theodore Hahn, & Charles Keinath, greeting:

You are hereby commanded that you and each of you personally appear before the judges of the circuit court of the United States of America for the southern district of New York, in the second circuit court, in equity, on the first Monday of August, A. D. 1872, wherever the said court shall then be, to answer a bill of complaint exhibited against you in the said court by Jacob E. Buerk, and to do further and receive what the said court shall have considered in that behalf. And this you are not to omit under the penalty on you and each of you of two hundred and fifty dollars.

Witness honorable Salmon P. Chase, Chief Justice of the Supreme Court of the United States, at the city of New York, on the 5th day of July, in the year one thousand eight hundred and seventy-two, and of the Independence of the United States of America the ninety-seventh.

[L. S.] KENNETH G. WHITE, *Clerk.*

J. VAN SANTVOORD,
Compl't's Sol'r.

The defendants are required to enter appearance in the above cause in the clerk's office of this court on or before the first Monday of August, 1872, or the bill will be taken pro confesso against them.

K. G. W., *Clerk.*

Served as per affidavit annexed.

GEO. H. SHARPE,
U. S. Marshal.

AUG. 6, 1872.

I hereby depute W. T. Smith to serve the within writ.

GEORGE H. SHARPE,
U. S. Marshal.

JULY 5, '72.

Filed Aug. 6, 1872.

SOUTHERN DIST. N. Y., *ss:*

W. T. Smith, being duly sworn, deposes and says that on the 5th day of July he served on Charles Keinath, one of the within-named defendants, the within subpœna, and on the 8th day of July, 1872, he served the within subpœna on William Imhaeuser, one of the within-named defendants, by leaving with them personally a copy of the within original, and on the 8th day of July, 1872, he served the within subpœna on the within-named defendant Theodore Hahn, by leaving a copy of the within original at his usual place of business, with his partner William Imhaeuser.

WM. T. SMITH.

Subscribed & sworn to before me this 9th July, 1872.

R. E. STILWELL,
U. S. Com'r.

2 In the circuit court of the United States. In equity.

To the honorable the judges of the circuit court of the United States for the southern district of New York:

Jacob E. Buerk, of Boston, Massachusetts, and a citizen of the State

of Massachusetts, brings this his bill of complaint against William Imhaeuser, Theodore Hahn, and Charles Keinath, of and doing business at the city of New York, in said southern district, under the name or style of "Imhaeuser & Co."

And thereupon your orator complains and says that on or before the sixth day of June, 1865, he, your said orator, was the first and original inventor and discoverer of certain new and useful improvements in watchman's time detectors, described in the letters patent hereinafter mentioned, and which was not known or used by others prior to his invention thereof, and which was not and had not been at the time of his application for letters patent therefor, as hereinafter mentioned, in public use or on sale with his consent and allowance, contrary to the provisions of the acts of Congress of the United States in such case made and provided; and that your said orator being so as aforesaid the first and original inventor and discoverer of said improvement, and being a citizen of the United States, and being desirous of obtaining an exclusive property in said invention or improvement within and for the United States, did, on the sixth day of June, 1865, upon due application therefor, and having in all things complied with the conditions and requirements of the acts of Congress in such case made and provided, obtain letters patent of the United States for said invention or improvement in due form of law, under the seal of the Patent Office of the United States, signed by the Acting Secretary of the Interior, and countersigned by the Commissioner of Patents, bearing date the said sixth day of June, 1865, and numbered 48048, as by said letters patent or a duly authenticated copy thereof in court ready to be produced will more fully and at large appear; by which said letters patent there was granted and secured, or intended to be granted and secured, to your orator, his heirs, administrators, or assigns, for the term of seventeen years from the said sixth day of June, 1865, the full and exclusive right and
3 liberty of making, constructing, using, and vending to others to be used the said improvement described in said letters patent; and by virtue whereof your orator became and has been ever since the date of said letters patent, and now is, entitled to all the rights, interests, and privileges thereby secured or intended to be granted and secured unto him in and to the said invention or discovery in the said letters patent particularly set forth, and is and has been ever since the date thereof entitled to the exclusive use of the said invention and improvement within the United States, and that he is entitled to all damages occasioned by any infringement of the said letters patent so as aforesaid granted to your orator by the use of the invention described therein.

And your orator further shows unto your honors that the said invention and improvement is very valuable and useful to the public, and is extensively used in factories and other establishments in the United States; and that the public has generally acquiesced in the validity of said patent and in the rights of your orator thereunder; and that your orator, finding that one Dennis Valentine, of Syracuse, N. Y., in the northern district of New York, was infringing said letters patent, commenced a suit in equity in the circuit court of the United States for the northern district of New York against the said Dennis Valentine, to restrain him from violating and infringing the rights of your orator under the letters patent aforesaid, and under other letters patent set forth in the bill of complaint in said suit and referred to in the opinion of the court hereinafter mentioned, and to require said Valentine to make account of his profits by reason of such infringement; in which

said suit your orator prayed that the said Valentine might be perpetually restrained and enjoined from such violation of the said rights; that the said Valentine duly appeared by solicitor in the said suit, and duly filed an answer therein, in which he, among other things, denied that your orator was the first and original inventor of the said improvement patented in said letters patent No. 48048, and alleged that the same invention in said patent No. 48048 patented was fully anticipated by inventions and publications of other parties, and further alleged that the same had been patented or described in printed publications prior to the invention or discovery thereof by your orator, and referred in his answer to the following named patents and publications as containing your orator's said invention or part thereof, to wit:

The British letters patent No. 5494, dated April 28th, 1827, granted to Henry Knight for an apparatus for indicating the attendance of workmen, etc.; and that Knight's said apparatus is also fully described in Luke Herbert's Engineers' and Mechanics' Encyclopædia, vol. 1, pages 704, 705, and 706; title, "Horology."

Appleton's Dictionary of Machines, Mechanic's Engine-work, and Engineering, vol. 1, page 87, title "Biram's Tell-tale," edition of 1850; and in vol. 1, page 80, of edition of 1861.

4 British letters patent, No. 957, granted December 4th, 1852, to John Rowbotham, for an improvement in time-keepers.

Polytechnisches Central Blatt, unter mitwirkung von Dr. J. A. Hülsee und W. Stein, Professoren an der K. Polytechnischen Schule in Dresden, herausgegeben von Dr. G. H. C. Schmidemann und C. T. H. Böttcher, Professoren an der K. Gewerbschule zu Chemnitz, der ein und zwanzigste Jahrgang, für das Jahr 1855, neue Folge, neunter Jahrgang, Leipzig," under date February 18th, 1855, page 215; title (translated), "Portable control watch," and alleged to be found in the Patent-Office library, Washington, D. C.

Printed proceedings of the Leipzig Polytechnic Institute, No. 4, pages 40 and 41, alleged to have been published February 5th, 1864. That proofs for final hearing were duly taken in said suit by both the parties thereto, and the said Dennis Valentine, the defendant therein, gave in evidence papers purporting to be or to contain copies of the said patents, and also copies or extracts from said publications, for the purpose of showing with respect to your orator's paid patent, No. 48048, that his said patent was not valid, and that the invention therein described and patented was old and well known, and had been patented or described in printed publications prior to the time of the application by your orator for his said patent; and that after full arguments on both sides in the said suit, the same coming on upon final hearing before his honor Mr. Justice Woodruff, circuit judge of the aforesaid second circuit, the aforesaid last-mentioned court, on the 19th day of March, 1872, decided against the said Dennis Valentine in the said suit, and sustained the said letters patent, No. 48048, so granted to your orator, upon all the issues in the said suit, and decided among other things that the said proofs adduced by the said Valentine did not show or describe the said invention patented to your orator by said letters patent, No. 48048, and that the mechanical means described in said proofs were different from your orator's invention; and your orator shows that a copy of a certified copy of the opinion of said court in the said suit is hereto annexed, marked Shedule A.

And your orator avers and claims, that by the aforesaid suit in equity against the said Dennis Valentine, and by the acquiescences and uses hereinbefore set forth, the validity of your orator's said letters patent

No. 48048, and the novelty and utility of the invention patented in the same, are fully established and settled.

And your orator further shows unto your honors that he has always kept on hand a sufficient number of watchman's time detectors, embodying and containing said invention, to furnish the public with the same, and has invested and expended large sums of money in introducing the said invention to the public, and much time and trouble in endeavoring to make the same valuable and useful to the public, as well as profitable to himself; and your orator believes that if he can be protected in the use of said invention and improvements against infringements and violations of said letters patent, he will be able to realize and receive large gains and profits therefrom.

And your orator shows that the said invention and improvement secured to him by the said letters patent are of great profit and value to your orator, yet the said defendants well knowing the premises and the rights and privileges so as aforesaid secured to your orator by the said patent, but contriving and intending to injure your orator, and to deprive him of the benefits and advantages which might and otherwise would have accrued to him from the said invention and letters patent, and since the granting of said letters patent to your orator, and before the commencement of this suit, have made and manufactured, or caused to be made and manufactured, and sold for use, watchman's time detectors, containing and employing substantially the invention and improvement set forth in said letters patent, to wit, within the southern district of New York, and in divers other parts of the United States, and that said defendants have, as your orator is informed and believes, now on hand a large number of said watchman's time detectors, containing and using the said invention in violation and infringement of the said letters patent of your orator, and are, as your orator is informed and believes, carrying on the business of making or causing to be made and importing and selling said watchman's time detectors, or apparatus, in said southern district of New York, and of selling them by their agents in other places of the United States; and your orator further shows unto your honors that such manufacture, sale, and use of said watchman's time detectors have been and are without the license or consent and against the will of your orator, and in violation of his rights, and in infringement of the aforesaid letters patent No. 48048, and are carried on and persisted in after notice to said defendants that they were infringing upon the said patent and the rights of your orator, and after warning to cease and desist from further infringement of the same; but how many of the said watchman's time detectors the said defendants have so made, or caused to be made, or imported, and sold and used, your orator is ignorant and can not set forth, but your orator avers that the said defendants have made and sold by themselves and their agents and servants a large number thereof, and that they have derived and received and are still deriving and receiving from such sale and use great gains and profit, but to what amount your orator is ignorant and cannot set forth; and he prays that the said defendants may be required to make a disclosure of all such gains and profits, and of the number of such articles containing the invention patented to your orator as aforesaid by said letters patent No. 48048 which have been sold by said defendants, and of the number they have on hand.

And your orator, upon information and belief, further shows that the defendants import from abroad the said watchman's time detectors, or some of them, sold by them in the said southern dis-

trict and elsewhere in the United States, in infringement of your orator's rights under his said letters patent.

And your orator shows unto your honors that by means of the said unlawful and wrongful acts and infringement above mentioned, by the said defendants committed, they, the said defendants, have greatly injured and are still injuring your orator, and have deprived and still are depriving your orator of, and have prevented your orator from obtaining and receiving the gains and profits from the use of the said improvement which your orator otherwise and but for the said wrongful acts of the defendants would have obtained and received.

In consideration whereof, and forasmuch as your orator is without adequate and proper relief, except in this court, to the end therefore that the defendants may if they can show why your orator should not have the relief hereby prayed, and may upon their and each of their corporal oaths, and according the best and utmost of their knowledge, remembrance, information, and belief, full, true, and direct answers make to the premises and to all the several matters hereinbefore stated and charged as fully and particularly as if severally and separately interrogated as to each and every of said matters; and that the defendants may set forth how many of such watchman's time detectors they have sold by themselves or their agents, and to whom the same were sold and at what price, and where the defendants obtained the same, and what profits the defendants have made thereon.

And your orator prays that the said defendants may be compelled to account for and pay over to your orator the profits by them acquired, and also the damages sustained by your orator from the unlawful acts of the defendants, and that said defendants, their agents, servants, attorneys, and workmen, and each and every of them, may be restrained and enjoined by the order of this court from directly or indirectly making, constructing, using, vending, delivering, or putting into use, or in any manner counterfeiting or imitating the said invention or improvement patented in said letters patent No. 48048 of your orator, or any part thereof, and that all such infringing detectors or articles in the possession of defendants may be forthwith destroyed or delivered up to your orator, and that the defendants may be decreed to pay the costs of this suit.

And that your orator may have such other or farther relief as to this honorable court shall seem meet, and as shall be agreeable to equity and good conscience—

May it please your honors to grant unto your orator the writ of injunction, issuing out of and under the seal of this honorable
7 court, commanding, enjoining, and restraining the said defendants, William Imhaeuser and Theodore Hahn and Charles Keinath, their agents, attorneys, servants, and workmen, as is hereinbefore in that behalf prayed.

May it please your honors to grant unto your orator the writ of subpœna issuing out of and under the seal of this honorable court, directed to the said defendants, William Imhaeuser and Theodore Hahn and Charles Keinath, commanding them and each of them, by a certain day and under a certain penalty therein expressed, to be and appear in this honorable court, then and there to answer the premises and to stand to and abide by such order and decree as may be made against them, and your orator will ever pray, &c.

(Signed) JACOB E. BUERK.

J. VAN SANTVOORD,
Sol'r for Compl't and of Counsel.

STATE OF MASSACHUSETTS.
City of Boston, District of Massachusetts, ss:

Jacob E. Buerk, the complainant in the foregoing bill of complaint named, being duly sworn, deposes and says that he has read the foregoing bill of complaint by him subscribed, and knows the contents thereof, and that the same are true, of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true. And he further deposes and says that he verily believes himself to be the first and original inventor or discoverer of the invention or improvement patented to him by the said letters patent No. 48048, as set forth in said bill of complaint, and that the said invention has not, to the best of his knowledge, information, or belief, been in use or been described before the invention or discovery thereof by said deponent.

(Signed) JACOB E. BUERK.

Subscribed and sworn to before me this 22d day of June, 1872.
Before me,
[L. S.] JOHN G. STETSON,
Clerk U. S. Circuit Court, District of Mass.

SCHEDULE A.

(See Exhibit G)

8, 9 U. S. circuit court, southern dist. of New York.

JACOB E. BUERK
vs.
WILLIAM IMHAEUSER, THEODORE, HOHN AND Charles Keinath. } In equity.

To the clerk of said court.

SIR: Please take notice that we appear for the defendants in the above entitled cause.

Dated New York, July 29, 1872.
Yours, &c.,
KELLER & BLAKE,
Def'ts' Sol'rs.

(Endorsed:) U. S. circuit court, south. dist. of N. Y. In equity. Jacob E. Buerk vs. Wm. Imhaeuser, Theodore Hohn, and Charles Keinath. Precepe. Keller & Blake, def'ts' sol'rs. Filed July 29, '72.

10 United States circuit court, southern district of New York. In equity.

JACOB E. BUERK
vs.
WILLIAM IMHAEUSER, THEODORE KAHN, AND Charles Keinath.

The joint and several answer of William Imhaeuser, Theodore Kahn, and Charles Keinath, defendants above named to the bill of complaint of Jacob E. Buerk, complainant.

These defendants, saving and reserving to themselves all and all manner

of benefit and advantage whatsoever of exception which can or may be had or taken to the manifold errors, uncertainties, insufficiencies, and imperfections in complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as they are advised it is material or necessary for them to make answer unto, answering say:

11 That they admit, on information and belief, that letters patent of the United States bearing date the 6th day of June, A. D. 1865, were granted to the said complaint for an alleged improvement in Watchman's time detectors, but these defendants deny that the said complainant was the original or first inventor of the alleged improvement, and that the same had not been known or used by others before the alleged invention or discovery thereof by him.

And these defendants, further answering, deny that the said alleged invention is very valuable and useful to the public, as is alleged in said bill of complaint, and they further deny that the public generally or any considerable portion thereof have acquiesced in and acknowledged the validity of said letters patent or the alleged exclusive rights of the complainant thereunder.

And these defendants, further answering, on information and belief, admit that the said complainant instituted a suit in equity in the

12 United States circuit court for the northern district of New York against one Dennis Valentine, and that said suit was carried to final hearing and a decision rendered in favor of said complainant, as alleged in said bill, but these defendants deny that said suit was well and fully defended, or that said suit and the result thereof fully settled and established, the validity of said letters patent or the novelty and utility of the alleged invention described and claimed therein.

And these defendants' further answering, deny any and all violation and infringement of said letters patent, and the alleged or any rights of the complainant thereunder, wherewith they stand charged in said bill, and aver that the only watchman's time detectors made or sold by them were so made and sold under and by virtue of two several letters patent of the United States, one granted to Theodore Kahn, one of the defendants above named, as the assignee of A. Meyer, of Stuttgart, Germany, bearing date the 28th day of December, A. D. 1869,

13 and the other granted to said A. Meyer on the 25th day of July, A. D. 1871, and these defendants say that if anything contained in said detectors so made and sold by them should be construed to be an infringement of complainant's said letters patent, then and to that extent they charge that the said letters patent recited in said bill of complaint are invalid for want and novelty, as long anterior to the alleged or any invention or discovery thereof by the said complainant the same things, and every substantial and material part thereof described and claimed in said letters patent as new, were well known and used, and were also described and patented in Europe, and will be found fully set forth and described in a French publication entitled Brevet d'invention, vol. 12, 2d series, at page 91, being letters patent granted in France to one Nolet in the year 1847; and also in a German work by Emanuel Schreiber, and entitled "Dr. Friedrich Wilhelm Barfuss's Geschechte der Uhrmacher Kunst von den ältester Zeiten bis auf un-

14 sere Tage," published in the year 1856 by Bernh. Friedr. Voeght, in Weimar, Germany, and on pages 363 to 367, inclusive.

And these defendants deny that they have in any manner infringed upon the said letters patent or the alleged or any rights of the complainant thereunder, as charged in said bill, or that they have conspired or

intended to injure the said complainant or to deprive him of any just and lawful advantage whatever.

Wherefore and for the causes aforesaid these defendants wholly deny the equity of complainant's said bill and his title to the relief prayed against these defendants.

And they deny the right of complainant to any disclosure or discovery by these defendants of the number of such detectors so as aforesaid made and sold by them or of the amount of gains and profits realized by these defendants from or by reason of such manufacture and sale.

All which matters and things these defendants are and will be
15 ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray that they may be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained.

WILLIAM IMHAEUSER.

KELLER & BLAKE,
Of Counsel.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

William Imhaeuser, being duly sworn, deposes and says that he is one of the defendants named in the foregoing answer subscribed by him; that he has read the same and knows the contents thereof, and that the same is true of his own knowledge, except as to those matters therein stated on information and belief, and that as to those matters he verily believes it to be true.

WILLIAM IMHAEUSER.

Sworn to before me this 9th day of Sept., 1872.

W. H. BISHOP,
Notary Public, City of New York.

16 (Endorsed:) U. S. circuit court, southern district N. Y. In equity. Jacob E. Buerk vs. William Imhaeuser, Theodore Kahn & Charles Keinath. Answer. Keller & Blake, def'ts' sol'r. Filed Sept. 10, 1872.

17 United States circuit court, southern district of New York. In equity.

JACOB E. BUERK
vs.
WILLIAM IMHAEUSER, THEODORE KAHN, & Charles Keinath.

We hereby amend our answer filed herein by striking out the preamble and inserting in lieu thereof the following, viz:

The joint and several answer of William Imhaeuser and Theodore Kahn, defendants above named, impleaded with Charles Keinath, to the bill of complaint of Jacob E. Buerk, complainant.

Dated Sept. 12, 1872.

KELLER & BLAKE,
Sol'rs for Defendants Imhaeuser & Kahn.

(Endorsed:) U. S. circuit court south. dist. of N. Y. Jacob E. Buerk vs. Wm. Imhaeuser et als. Amendment to the answer of defendants Imhaeuser & Kahn. Keller & Blake, sol'rs. Filed Sept. 13th, 1872.

18 I hereby consent to the filing of the within amendment.

J. VAN SANTVOORD,
Compl't's Sol'rs.

19 U. S. circuit court, southern district of New York. In equity.

JACOB E. BUERK
vs.
WILLIAM IMHAEUSER, THEODORE HAHN, & Charles Keinath.

The replication of the above named complainant to the answer, as amended, of William Imhaeuser, Theodore Hahn, impleaded with Charles Keinath, defendants.

This repliant, saving to himself now and at all times hereafter all and all manner of benefit and advantage of exception which may be had or taken to the manifold insufficiencies of the said answer, for replication thereunto says, that he will aver, maintain, and prove his bill of complaint to be true, certain, and sufficient in the law to be answered unto, and that the said answer of the said defendants is uncertain, untrue, and insufficient to be replied unto by repliant, without this, that any other matter or thing whatsoever in the said answer con-
20 tained material or effectual in the law to be replied unto, and not herein well and sufficiently *well and sufficiently* replied unto, confessed and avoided, traversed or denied, is true. All which matters and things this repliant is and will be ready to aver, maintain and prove as this honorable court shall direct, and humbly prays as in and by his said bill he has already prayed.

J. VAN SANTVOORD,
Sol. for Compl'nt.

(Endorsed:) Cir. court, U. S. southern dist. of N. Y. Jacob E. Buerk vs. Wm. Imhaeuser & al. Replication. J. Van Santvoord, sol. for compl't. Filed Sept. 23, 1872.

21 Circuit court of the United States, southern district of New York.

JACOB E. BUERK
vs.
WILLIAM IMHAEUSER, THEODORE HAHN, impleaded with Charles Keinath.

The bill of complaint filed herein is hereby amended by inserting, after the setting up therein of the decision of Mr. Justice Woodruff in the suit against Dennis Valentine, the following:

"And your orator further shows unto your honors that the invention described and secured in and by said letters patent, No. 48048, relates to and consists of an improvement on the invention of John Burk in watchman's time directors, for which letters patent were granted by the United States January 1st, 1861, No. 31052, to your orator as the assignee of said John Burk, which letters patent last named were reissued to your orator March 8th, 1870, by reissue No. 3869, and have expired by limitation; which said original and reissued patents were recorded in the Patent Office of the United States, as by said letters patent, No. 31052, and said reissued patent, or authenticated copies thereof, here in court ready to be produced, will fully and at large appear; and your orator prays leave to introduce the same, or authenticated copies thereof, in evidence, and to refer thereto on the hearing of this cause in explanation of your orator's said invention."

J. VAN SANTVOORD,
Sol'r for Comp't.

SOUTHERN DISTRICT OF NEW YORK,
City and County of New York, ss:

John Van Santvoord, being duly sworn, deposes and says that he is solicitor for the complainant in the above action; that he has read the foregoing amendment to the bill of complaint therein and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated on information and belief, and as to those matters he verily believes it to be true; and, further, that the
22 reason he makes deposition to the said amendment is that the complainant resides in Boston, and is not at present in the city of New York or within the said southern district of New York.

JOHN VAN SANTVOORD.

Subscribed and sworn to before me this 15th March, 1873.
[L. S.] CLARENCE CARY,
Notary Public, New York City and County.

Circuit court of the United States States, southern district of New York. In equity.

JACOB E. BUERK
vs.
WILLIAM IMHAEUSER AND THEODORE HAHN, impleaded with Charles Keinath.

It is hereby stipulated and consented that the foregoing amendment to the bill of complaint herein be filed nunc pro tunc, and be taken as part of said bill, and that the patents therein mentioned may be put in evidence by the complainant, and the parties hereto waive the filing of a new answer tosuch amended bill of complaint.

J. VAN SANTVOORD,
Sol'r for Complainant.
KELLER & BLAKE,
Resp'ts' Solicitors:

NEW YORK, *March* 15, 1873.

23 United States circuit court, southern district of New York. Equity.

JACOB E. BUERK
vs.
WILLIAM IMHAEUSER, & THEODORE HAHN, impleaded with Charles Keinath.

We hereby amend the answer filed herein by inserting immediately after the setting up of the German work by Emanuel Scheiber the following, viz:

"And in French letters patent granted to Messrs Schwilque pere (Jean Baptiste) et fils (Charles Maximilien), mecaniciens à Strasbourg (Bas Rhin), bearing date April 28th, 1847, and numbered 18,063, for an instrument called 'marquer portatif,' duly sealed and signed at Paris July 10th, 1847, for the minister and by delegation by Signer Chamille Paganet."

WILLIAM IMHAEUSER.

KELLER & BLAKE,
Sol. for Defendant.

24 UNITED STATES OF AMERICA,
Southern Dist. of New York, ss:

William Imhaeuser, being duly sworn, deposes and says that he is one of the defendants named in the above amendment to the answer herein, that he has read the same and knows the contents thereof, and that the same is true of his own knowledge.

WILLIAM IMHAEUSER.

Sworn to before me this 6 d'y of Janua'y, A. D. 1873.
[L. S.]
W. H. BISHOP,
Notary Public, City of New York.

It is hereby stipulated and agreed that the foregoing amendment to the answer filed in this cause be filed nunc pro tunc, and that said answer be considered as so amended, and the parties hereby waive the filing of a new replication to such amended answer.

J. VAN SANTVOORD,
Compl't's Sols.
KELLER & BLAKE,
Def'ts' Sols.

New York, March 19, 1873.

(Endorsed:) U. S. circuit court, south. dist. of N. Y. Equity. Jacob E. Buerk vs. William Imhaeuser et al. Amended answer. Filed M'ch 24, 1873.

25 United States circuit court, southern dist. of New York. In equity.

JACOB E. BUERK
vs.
WILLIAM IMHAEUSER ET ALS.

It is hereby consented that the defendants herein may amend their answer as already filed by inserting the hereto amended new matter at the place indicated, and it is further consented that further replication be waived, and that this amendment shall in no wise affect the time of closing proof or joining issue.

New York, December 17, 1873.

J. VAN SANTVOORD,
Sol. for Compl't.
KELLER & BLAKE,
Sol. for Defendants.

26 United States circuit court, southern district of New York. In equity.

JACOB E. BUERK
vs.
WILLIAM IMHAEUSER ET ALS.

To the honorable the judges of said court:

And now come these defendants, and upon consent of counsel and leave of the court obtained, amend their answer as already filed, by inserting immediately after the allegation in said answer that the alleged invention of the complainants was described and set forth in the

French letters patent, granted to Messrs. Schwilque pere (Jean Baptiste) et fils (Charles Maximilien), mecaniciens, &c., dated April 28th, 1847, numbered 18,063, the following, to wit:

"And these defendants, further answering, aver that the said alleged invention claimed to be secured to the complainant herein and to have been described in his said letters patent upon which this
27 suit was brought, were fully and accurately described, or all material and essential parts thereof, in the English letters patent granted to John Rawbotham, in the year 1852, and numbered 957, and in the English letters patent granted to Francis Buckney, in the year 1862, numbered 1431.

"Wherefore and for the causes above set forth these defendants wholly deny any infringement or violation by them of any legal rights of the complainant herein, and his title to the relief prayed for in the bill of complaint herein, and they pray as they have heretofore prayed, that they be hence dismissed with their reasonable costs and charges in this behalf most wrongfully sustained."

WILLIAM IMHAEUSER.

KELLER & BLAKE,
Counsel & Solr. for Defendants.

UNITED STATES OF AMERICA,
Southern District of New York, ss:

William Imhaeuser, being duly sworn, says that he is one of the
28 defendants named in the foregoing amendment to the answer, that he has read the same and knows the contents thereof, and that the same is true of his own knowledge, except such matters as are therein mentioned on information and belief, and as to such matters he verily believes it to be true.

WILLIAM IMHAEUSER.

Subscribed & sworn to before me this 20 day of January, A. D. 1874.
[L. S.] PHILLIPS ABBOTT,
Notary Public, New York County.

(Endorsed:) U. S. circuit court. S. D. of N. Y. In equity. Jacob E. Buerk vs. William Imhaeuser et als. 3d amendment to answer.

Ordered on file, Jan'y 21, 1874.

JAME. BLATCHFORD.

Filed Jan'y 21, 1874.

29 Circuit court of the United States for the southern district of New York. In equity.

JACOB E. BUERK
vs.
WILLIAM IMHAEUSER AND THEODORE HAHN, impleaded with Charles Keinath.

Testimony taken on the part of the complainant under the 67th rule of the Supreme Court of the United States (as amended), for final hearing.

MONDAY, *November* 18, 1872.

Present, John Van Santvoord, esq., counsel for complainant; Charles M. Keller, esq., counsel for defendants.

Counsel for complainant offers in evidence letters patent of the United

States No. 48048, dated June 6th, 1865, granted to Jacob E. Buerk for an improvement in watchman's time detectors, and the same is marked Complainant's Exhibit A, R. E. S., Ex'r, and it is consented by the counsel for both parties that a copy thereof, to be certified as such by the examiner, may be substituted as such exhibit in the place of the original.

WILLIAM H. P. SMITHSON, called and sworn as a witness on the part of the complainant, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. William H. P. Smithson; 38 years of age; reside in Richmond County, Staten Island, and am a clerk with Eberhard Faber, No. 133 William street, New York.

Q 2. Have you at any time and if so when, purchased a watchman's time detector from Imhaeuser & Co.? and state for whom you purchased the same.

A. Some time in June, 1872, I purchased a watchman's clock or time detector from the firm of Imhaeuser & Co., for Eberhard Faber.

30 Q. 3. Can you produce the article or articles you so bought, and will you do so?

A. I can, and I now produce them, including the pouch containing the detector.

(Counsel for complainant offers in evidence the articles produced, being a detector, No. 1628, a set of keys and a box of paper dials, and the same are marked Complainant's Exhibits B, R. E. S., Ex'r, &c.)

Q. 4. Did you ever receive from Imhaeuser & Co. a bill or receipt for Exhibits B. at the time you bought them; and if so, can you produce it?

A. I did, and I now produce it.

(The bill produced by the witness is offered in evidence by complainant's counsel, and the same is marked Complainant's Exhibit C, R. E. S., Ex'r.)

Q. 5. Can you state on what day in June, 1872, you bought this detector, Exhibit B?

A. I bought it on the 21st of June.

Cross-examined by Mr. Keller:

X Q. 6. Did you purchase Exhibit B. at the request of complainant?

A. I did not.

WM. H. P. SMITHSON.

Subscribed and sworn to before me this 18th day of November, 1872.

R. E. STILLWELL,
Examiner, &c.

31 A. FABER DU FAUR, being called and duly sworn as a witness in behalf of complainant, deposes and says:

Q. 1. What is your name, age, residence, and occupation?

A. My age is 46; residence, Newark, N. J.; occupation, engineer and metallurgist, and my office is at No. 90 Broadway, New York City.

Q. 2. Are you in the habit of testifying as an expert in patent causes, and if yea, for how long time have you been thus engaged?

A. I have during the last 4 years testified as an expert in patent causes in a considerable number of cases.

Q. 3. Have you read and examined complainant's patent, Exhibit A, and do you understand the invention described and claimed therein?

And, if yea, please state what, in your opinion, is the invention described and claimed in it.

A. I have read and examined letters patent No. 48048, marked Complainant's Exhibit A, and I believe I understand the invention described and claimed therein. The invention described is an improvement in watchman's time detectors, and particularly in that kind to which U. S. letters patent have been granted to John Buerk, in 1861. The invention of John Buerk provided for the watchman a watch which he carried with him in his rounds, so constructed that by the insertion of a key provided at each of the stations which he was required to visit, he could make within the watch a record indicating the several stations visited, the precise time of each visit, and the order in which the respective visits to the stations were made. For recording the visits, John Buerk used a strip of paper stretched on the circumference of a cylindrical drum, which received rotary motion by the watch movement, the drum being attached to the arbor of the watch upon which the hour-hand is placed. A gang of spring-points were placed exterior to the watch movement, but within the case, so that the points were in a row perpendicular to the watch face. These spring points were used for perforating the paper, the points being pressed against the paper by inserting keys in a hole through the case and turning the keys. The paper strip was divided into time divisions, and into spaces running lengthwise, corresponding in number and position to the number of the spring-points or markers. Each separate key would press a different combination of points against the strip of paper, thereby making perforations indicating the time when and the key by which the perforations were made. In complainant's invention, the drum and paper used thereon are removed entirely. A circular disk is attached to the arbor of the hour-hand, to revolve therewith, and to this disk is attached a circular flat paper dial of larger diameter, divided by radial lines corresponding to the hours and minutes of a watch dial, and having a portion of its exterior divided into spaces by circular lines drawn at uniform distances, such spaces corresponding to the location of the steel points used for marking.

32

Beneath a circular plate, forming the support or frame of the watch movement, a series of spring-points is firmly attached to such plate, in such a position that the points are in a straight line radial from the centre. By means of keys, these spring-points can be forced through a slot in the supporting plate so as to perforate the paper dial in the space or spaces corresponding to the point or points of the spring or springs raised. Above the paper dial, and opposite the spring-point, i s placed what is called a "stationary index." A small strip of metal, fastened to the circular frame or plate of the watch, and extending towards the centre of the disc, raised sufficiently above the revolving disc to permit the paper to revolve freely under it, and over the slot or the holes through which the spring-points are to rise. Keys are inserted into a key-hole, so located that the bits of the keys, when turned, force the springs upward. By this means, perforations are made in the exterior portion of the revolving paper dial, and the place of perforation indicates the precise hour and minute it was made, and the particular key by which it was made. The perforations are from beneath upward.

The inventor claims, first, the use of a false revolving dial, in combination with a stationary index and spring-points, constructed and operated as and for the purposes substantially set forth; second, producing the perforations in the paper dial or its equivalent from the inside out, instead of from the outside in, as before; one of the objects of this method

of perforating being to form a slight barb on the upper surface, whereby the mark is rendered more prominent than if it had been made in an opposite direction.

(So much of the foregoing answer as relates to the prior patent, granted to John Bürk in 1861, and which purports to describe the invention contained in that patent, is objected to by defendants' counsel as incompetent, and because said patent is the best evidence of the invention therein described; and so much as relates to what is claimed in complainant's patent is objected to, as the claim in a patent is matter of law for the court, and not matter of fact for the witness.)

(Witness continues:) The other object being to have it so arranged that similar perforations cannot be made, even if the watch should be opened, without taking the paper dial off.

Q. 4. Please examine the time detector, Complainant's Exhibit B, and compare the same with the invention described in the said patent,
33 48048, and specified in the claim thereof, and state whether you find in said Exhibit B the invention, or any part thereof, described in said patent and specified in the said claims, and give your reasons for any opinion you may express.

(Objected to, as it calls for a construction of the claims of the patent by the witness, which is a matter of law for the court.)

A. I have examined complainant's Exhibit B, and find the same to be a watchman's time detector, substantially the same in construction and operation as the watchman's time detector described in complainant's patent No. 48,048, Exhibit A, the only difference being in the construction of the marking device of Exhibit B, which is not the same as described in Exhibit A, but modified, as appears to me, for the purpose of evading the complainant's patent. While preserving the arrangement of the markers in a gang in a line radiating from the centre, the markers are made stationary, and instead of pressing them against the paper by means of the keys, while the index is supporting the paper in Exhibit B, the keys, supported by the stationary index, press the paper against the markers; the faces of the markers, instead of being simple points, form small figures, and the divisions of the paper dial by concentric circles is omitted, as it appears that the different figures are to indicate the different stations, although the radial arrangement of the gang of markers is necessarily preserved. By pressing on the stationary index of Exhibit B I find that it readily yields. By taking a sight over the edge of the case parallel to the dial, and turning one of the keys for the purpose of making a mark (the watch being open), I find that during this operation the stationary index yields and acts as a spring. The marks made I consider perforations in the sense of complainant's patent. The arrangement of the marking device is substantially similar or the mechanical equivalent of the marking device or spring-points in complainant's patent, which form one of the elements of the first claim. The other elements of the first claim—the false revolving dial and the stationary index—are the same in Exhibit B as in complainant's patent. I also find in Exhibit B the perforations or marks made from the inside out, as claimed in the second claim of complainant's patent.

A. FABER DU FAUR.

Subscribed and sworn to before me this 18th November, 1872.

R. E. STILWELL,
Examiner, etc.

Further examination adjourned to the 13th December at 4 p. m.

And, if yea, please state what, in your opinion, is the invention described and claimed in it.

A. I have read and examined letters patent No. 48048, marked Complainant's Exhibit A, and I believe I understand the invention described and claimed therein. The invention described is an improvement in watchman's time detectors, and particularly in that kind to which U. S. letters patent have been granted to John Buerk, in 1861. The invention of John Buerk provided for the watchman a watch which he carried with him in his rounds, so constructed that by the insertion of a key provided at each of the stations which he was required to visit, he could make within the watch a record indicating the several stations visited, the precise time of each visit, and the order in which the respective visits to the stations were made. For recording the visits, John Buerk used a strip of paper stretched on the circumference of a cylindrical drum, which received rotary motion by the watch movement, the drum being attached to the arbor of the watch upon which the hour-hand is placed. A gang of spring-points were placed exterior to the watch movement, but within the case, so that the points were in a row perpendicular to the watch face. These spring points were used for perforating the paper, the points being pressed against the paper by inserting keys in a hole through the case and turning the keys. The paper strip was divided into time divisions, and into spaces running lengthwise, corresponding in number and position to the number of the spring-points or markers. Each separate key would press a different combination of points against the strip of paper, thereby making perforations indicating the time when and the key by which the perforations were made. In complainant's invention, the drum and paper used thereon are removed entirely. A circular disk is attached to the arbor of the hour-hand, to revolve therewith, and to this disk is attached a circular flat paper dial of larger diameter, divided by radial lines corresponding to the hours and minutes of a watch dial, and having a portion of its exterior divided into spaces by circular lines drawn at uniform distances, such spaces corresponding to the location of the steel points used for marking.

32

Beneath a circular plate, forming the support or frame of the watch movement, a series of spring-points is firmly attached to such plate, in such a position that the points are in a straight line radial from the centre. By means of keys, these spring-points can be forced through a slot in the supporting plate so as to perforate the paper dial in the space or spaces corresponding to the point or points of the spring or springs raised. Above the paper dial, and opposite the spring-point, i s placed what is called a "stationary index." A small strip of metal, fastened to the circular frame or plate of the watch, and extending towards the centre of the disc, raised sufficiently above the revolving disc to permit the paper to revolve freely under it, and over the slot or the holes through which the spring-points are to rise. Keys are inserted into a key-hole, so located that the bits of the keys, when turned, force the springs upward. By this means, perforations are made in the exterior portion of the revolving paper dial, and the place of perforation indicates the precise hour and minute it was made, and the particular key by which it was made. The perforations are from beneath upward.

The inventor claims, first, the use of a false revolving dial, in combination with a stationary index and spring-points, constructed and operated as and for the purposes substantially set forth; second, producing the perforations in the paper dial or its equivalent from the inside out, instead of from the outside in, as before; one of the objects of this method

of perforating being to form a slight barb on the upper surface, whereby the mark is rendered more prominent than if it had been made in an opposite direction.

(So much of the foregoing answer as relates to the prior patent, granted to John Bürk in 1861, and which purports to describe the invention contained in that patent, is objected to by defendants' counsel as incompetent, and because said patent is the best evidence of the invention therein described; and so much as relates to what is claimed in complainant's patent is objected to, as the claim in a patent is matter of law for the court, and not matter of fact for the witness.)

(Witness continues:) The other object being to have it so arranged that similar perforations cannot be made, even if the watch should be opened, without taking the paper dial off.

Q. 4. Please examine the time detector, Complainant's Exhibit B, and compare the same with the invention described in the said patent,
33 48048, and specified in the claim thereof, and state whether you find in said Exhibit B the invention, or any part thereof, described in said patent and specified in the said claims, and give your reasons for any opinion you may express.

(Objected to, as it calls for a construction of the claims of the patent by the witness, which is a matter of law for the court.)

A. I have examined complainant's Exhibit B, and find the same to be a watchman's time detector, substantially the same in construction and operation as the watchman's time detector described in complainant's patent No. 48,048, Exhibit A, the only difference being in the construction of the marking device of Exhibit B, which is not the same as described in Exhibit A, but modified, as appears to me, for the purpose of evading the complainant's patent. While preserving the arrangement of the markers in a gang in a line radiating from the centre, the markers are made stationary, and instead of pressing them against the paper by means of the keys, while the index is supporting the paper in Exhibit B, the keys, supported by the stationary index, press the paper against the markers; the faces of the markers, instead of being simple points, form small figures, and the divisions of the paper dial by concentric circles is omitted, as it appears that the different figures are to indicate the different stations, although the radial arrangement of the gang of markers is necessarily preserved. By pressing on the stationary index of Exhibit B I find that it readily yields. By taking a sight over the edge of the case parallel to the dial, and turning one of the keys for the purpose of making a mark (the watch being open), I find that during this operation the stationary index yields and acts as a spring. The marks made I consider perforations in the sense of complainant's patent. The arrangement of the marking device is substantially similar or the mechanical equivalent of the marking device or spring-points in complainant's patent, which form one of the elements of the first claim. The other elements of the first claim—the false revolving dial and the stationary index—are the same in Exhibit B as in complainant's patent. I also find in Exhibit B the perforations or marks made from the inside out, as claimed in the second claim of complainant's patent.

A. FABER DU FAUR.

Subscribed and sworn to before me this 18th November, 1872.

R. E. STILWELL,
Examiner, etc.

Further examination adjourned to the 13th December at 4 p. m.

34 FRIDAY, *December* 13, 1872.

Present, counsel on both sides.

Complainant's counsel offers in evidence certified copies of the bill of complaint, answer, and replication in the suit of Jacob E. Buerk against Dennis Valentine, referred to in the bill of complaint herein, and also a certified copy of the opinion of Mr. Justice Woodruff in deciding said suit, and the same are marked Exhibits D, E, F, G, respectively.

Complainant's counsel also offers in evidence a circular of complainant, marked Exhibit H.

And also a circular of defendants, marked Exhibit I.

And it is admitted by the counsel for the respective parties that said Exhibits H and I are respectively circulars issued by the said parties before the commencement of this suit.

Testimony of complainant closed on opening case.

35 Circuit court of the United States, southern district of New York.

JACOB E. BUERK
vs.
WILLIAM IMHAEUSER ET AL.

Testimony of witnesses taken by R. E. Stillwell, examiner on the part of the complainant, for final hearing, under the 67th rule of the Supreme Court, as amended.

THURSDAY, *May 1st*, 1873.

Present, counsel for both parties.

Counsel for complainant offers in evidence reissued letters patent of the United States No. 3869, granted to complainant March 8, 1870, for an improvement in watchman's time detectors, being a reissue of letters patent originally granted to him January 1, 1861, and which were reissued August 22, 1865, said reissue of August 22, 1865, having been surrendered, and the same cancelled, and said reissue 3869 issued in place thereof; and the same is marked Complainant's Exhibit J, R. E. S., Ex'r, and it is consented by both parties that a certified copy thereof may be substituted as such exhibit.

Adjourned, subject to notice.

36 EXHIBIT C.

NEW YORK, *June 21st*, 1872.

Mr. Eberhard Faber, 133 *William st., bought of Imhaeuser & Co., general agents Hahn's Watchman's Time Detector*, 208 *B'way, P. O. box* 4798.

N. B.—Parties purchasing these clocks should test them sufficiently in the counting room or office, as they will not be taken back after having been injured by the watchman through carelessness.

1628.	1 H. M. watchman's time dectector.....	$75 —
	6 keys and 1 box dials.....	
	1 leather pouch	2 50
		$77 50
		$2 50
		$75 —

Rec'd pay't,

IMHAEUSER & CO.

37 EXHIBIT D.

In the circuit court of the United States. In equity.

To the honorable the judges of the circuit court of the United States for the northern district of New York:

Jacob E. Buerk, of Boston, Massachusetts, and a citizen of the State of Massachusetts, brings this his bill of complaint against D. Valentine, of the city of Syracuse, and a citizen of the State of New York, and within the said northern district of New York.

And thereupon your orator complains and says, on information and belief, that prior to the first day of January, 1861, John Bürk, of Schwenningen, in the kingdom of Württemberg, being a citizen of said kingdom and a subject of the king of Württemberg, was the first and original inventor and discoverer of a certain new and useful improvement in watchman's time detectors, described in the letters patent hereinafter mentioned, and which was not known or used by others prior to his invention thereof, and which was not and had not been at the time of his application for letters patent therefor, as hereinafter men-
38 tioned, in public use or on sale with his consent or allowance, and had not been introduced into public and common use in the United States prior to said application, contrary to the provisions of the acts of Congress of the United States, in such case made and provided.

And your orator further shows unto your honors that on or about the second day of July, 1860, that the said John Bürk, by an instrument in writing, under his hand and seal, duly executed and delivered on said last-named day, sold and assigned his invention and his entire right, title, and interest in and to the hereinafter mentioned letters patent to be granted therefor, to your orator, which said assignment was duly entered of record in the Patent Office of the United States, on the third day of December, 1860, in liber C^6, page 3, of transfers of patents, in and by which said assignment the said John Bürk authorized and requested the Commissioner of Patents to issue the said letters patent to your orator, the said Jacob E. Buerk, as the assignee of his whole right and title thereto, for the sole use and behoof of your orator and his legal representatives, as by said assignment, or a duly authenticated copy thereof, together with the certificate of the recording thereof, here in court ready to be produced, will fully and at large appear; that on the aforesaid first day of January, 1861, upon due application therefor made, letters patent for the aforesaid improvement in watchman's time detectors were, in due form of the law, issued and delivered to your
39 orator, as such assignee as aforesaid, of the said John Bürk, in the name of the United States of America, and under the seal of the Patent Office of the United States, and signed by the Secretary of the Interior, and countersigned by the Commissioner of Patents, and that the said letters patent granted to your orator and to his heirs, administrators or assigns, for the term of fourteen years from the said last-named day, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the aforesaid improvement in watchman's time detectors; and by virtue whereof your orator became and was the sole owner of all the rights and privileges granted or secured, or intended to be granted or secured in and by said letters patent, which letters patent were numbered 31052, and the same are now remaining of record in the Patent Office of the United States.

And your orator further shows unto your honors that he, having for

good and lawful cause after the issuing of said letters patent as aforesaid, surrendered the same to the Commissioner of Patents, and having made due application therefor, and having in all things complied with the requirements and conditions of the acts of Congress in such case made and provided, did on the twenty-second day of August, 1865, obtain new letters patent for the same invention for the residue of the said term of fourteen years from the first day of January, 1861; which said new letters patent on an amended specification were issued in due
40 form of law, under the seal of the Patent Office of the United States, signed by the Secretary of the Interior, and countersigned by the Commissioner of Patents, bearing date the said twenty-second day of August, 1865, and numbered reissue 2054, and which said reissued letters patent are now remaining of record in the Patent Office of the United States.

And your orator further shows unto your honors that the said John Bürk did, previous to his application for letters patent of the United States, for his said invention, to wit, on the twenty-ninth day of October, 1856, obtain letters patent therefor from the government of France, bearing date the said twenty-ninth day of October, as by said French patent or a duly authenticated copy thereof here in court ready to be produced will more fully and at large appear.

And your orator further shows unto your honors that your said orator having for good and lawful cause after the issuing of said letters patent numbered reissue 2054, surrendered the same to the Commissioner of Patents, and having made due application therefor, and having in all things complied with the requirements and conditions of the acts of Congress in such case made and provided, did, on the eig'th day of March, 1870, obtain new letters patent for the same invention on an amended specification for the residue of the term of fourteen years from the said twenty-ninth day of October, 1856, the date of the said French patent, which said new letters patent were issued in due form of law, un-
41 der the seal of the Patent Office of the United States, signed by the Acting Secretary of the Interior, and countersigned by the Commissioner of Patents, bearing date the said eighth day of March, 1870, and numbered reissue 3869, and which reissued letters patent are now remaining of record in the Patent Office of the United States, as by said reissued letters patent or a duly authenticated copy thereof in court ready to be produced will more fully and at large appear.

And your orator further shows unto your honors that on or before the sixth day of June, 1865, he, your said orator, was the first and original inventor and discoverer of certain new and useful improvements in watchman's time detectors, described in the letters patent hereinafter mentioned, and which were not known or used by others prior to his invention thereof, and which were not and had not been at the time of his application for letters patent therefor, as hereinafter mentioned, in public use or on sale with his consent and allowance contrary to the provisions of the acts of Congress of the United States in such case made and provided, and that your said orator, being so as aforesaid the first and original inventor and discoverer of said improvement, and being a citizen of the United States, and being desirous of obtaining an exclusive property in said invention or improvement within and for the United States, did, on the sixth day of June, 1865, upon due application therefor, and having in all things complied with the conditions and requirements of the acts of
42 Congress in such case made and provided, obtain letters patent of the United States for said invention or improvement in due form of law, under the seal of the Patent Office of the United States,

signed by the acting Secretary of the Interior, and countersigned by the Commissioner of Patents, bearing date the said sixth day of June, 1865, and numbered 48048, which said letters patent are now remaining of record in the Patent Office of the United States, and as by said letters patent, or a duly authenticated copy thereof, in court, ready to be produced, will more fully and at large appear; by which said letters patent there was granted and secured, or intended to be granted and secured, to your orator, his heirs, administrators, or assigns, for the term of seventeen years from the said sixth day of June, 1865, the full and exclusive right and liberty of making, constructing, using, and vending to others to be used, the said improvement described in said letters patent, and by virtue whereof your orator became and was the sole owner of all the rights and privileges granted and secured, or intended to be granted and secured, in and by said letters patent.

And your orator further shows unto your honors that, by virtue of the premises, he became and now is the sole owner of the rights and privileges granted and secured, or intended to be granted and secured, in and by the said several letters patent before referred and as above set forth, and is entitled to all damages occasioned by any infringe-
43 ments of either or both of said patents so as aforesaid granted to your orator, by the use of the inventions described therein.

And your orator further shows unto your honors that the said several inventions and improvements are very valuable and useful to the public, and are extensively used in factories and other establishments in the United States, and that there has been always up to the present time an uninterrupted, general, and undisputed acquiescence in the validity of said inventions and improvements and of said letters patent, and in the value and usefulness of said watchman's time detectors by the public; and that Henry G. Schaffer and Ludolph Portong, a firm formerly doing business in the city of New York, under the firm name of Schaffer & Budenburgh, heretofore used the said improvement described in said reissued patent No. 2054, and infringed upon the rights of your orator as secured by said reissued letters patent; and that thereupon your orator, on or about the fifteenth day of January, 1866, filed a bill and brought suit in the circuit court of the United States for the southern district of New York against said Henry G. Shaffer and Ludolph Portong on said reissued letters patent for their said infringements thereof, and the said defendants appeared therein and filed their answer denying the rights of your orator as patentee, and the novelty of said invention and the validity of said reissued letters patent; that issue was joined in said action and testimony taken before an examiner of said court, and
44 that meanwhile, before the final hearing, said Henry G. Schaffer departed this life, and the said action was by an order of said court continued as against said Ludolph Portong, the surviving defendant; that said cause was noticed for final hearing upon the pleadings and proofs therein for the February and April terms, 1869, of said court, and that on the sixth day of April, in said April term, 1869, your orator obtained a decree in said action sustaining the validity of said letters patent, and granting a perpetual injunction against the said defendant, as prayed for in your orator's said bill in said action, the said defendant having abandoned his defense and given his written consent to the taking and entering of said decree against him; and your orator shows that he has now in his possession a certified copy of said consent, and that he is ready to produce the same if required; and he shows that a copy of said certified copy is hereto annexed, marked Schedule A.

And your orator avers that by the above mentioned decree and the

aforesaid acquiescences the novelty of the said invention of the said John Bürk, and the validity of the letters patent granted to your orator therefor, and all the aforesaid rights of your orator thereunder are fully established and settled.

And your orator further shows unto your honors that he has always kept on hand a sufficient number of watchman's time detectors, embodying and containing said inventions, to furnish the public with the same, and has invested and expended large sums of money in introducing the said inventions to the public, and much time and trouble in endeavoring to make the same valuable and useful to the public as well as profitable to himself; and your orator believes that if he can be protected in the use of said inventions and improvements against infringements and violations of said letters patent, he will be able to realize and receive large gains and profits therefrom.

And your orator shows that the said inventions and improvements, secured to him by the said several letters patent, are of great profit and value to your orator, yet the said defendant well knowing the premises and the rights and privileges so as aforesaid secured by the same, but contriving and contending to injure your orator, and to deprive him of the benefits and advantages which might and otherwise would have accrued to him from the said several inventions and letters patent, and since the granting of said several letters patent to your orator, and before the commencement of this suit, has made, manufactured, and sold for use, watchman's time detectors, containing and employing substantially the inventions and improvements set forth in the said letters patent, to wit, within said northern district of New York, and in divers other parts of the United States, and that said defendant has, as your orator is informed and believes, now on hand a large number of said watchman's time detectors, containing and using the said inventions, in violation and infringement of the said letters patent of your orator, and is, as your orator is informed and believes, carrying on the business of making and selling said watchman's time detectors or apparatus in said northern district of New York, and of selling them by his agent in other places of the United States; and your orator further shows unto your honors that such manufacture, sale, and use of said watchman's time detectors has been and is without the license or consent and against the will of your orator, and in violation of his rights, and in infringement of the aforesaid letters patent and in defiance of his right, and are carried on and persisted in after notice to said defendant that he was infringing upon the patents and the rights of your orator, and after warning to cease and desist from further infringement of the same; but how many of the said watchman's time detectors the said defendant has so made, sold, and used, or caused to be made, your orator is ignorant and cannot set forth, but your orator avers that the said defendant has made and sold by himself and his agents and servants a large number thereof, and that he has derived and received and is still deriving and receiving from such sale and use great gains and profit, but to what amount your orator is ignorant and cannot set forth; and he prays that the said defendant may be required to make a disclosure of all such gains and profits, and of the number of such articles containing the inventions or either of them patented to your orator as aforesaid, which have been sold by said defendant, and of the number he has on hand.

And your orator, upon information and belief, further shows unto your honors that the said defendant has, since the grant of said letters patent of your orator, and before the commencement of this

suit, published and circulated business circulars bearing his name, wherein he pretends that he is the sole agent in the United States for a watchman's detective time-piece, made under a patent of one M. Grossman, but your orator is informed and believes, and therefore avers, that the article referred to and called in said circular watchman's detective time-piece, is none other than the watchman's time detector described in the said letters patent of your orator, and is an infringement thereof, and that there is no subsisting patent of the United States for said invention, or for anything similar thereto, known as the Grossman patent, or any patent which has been granted therefor by the United States to any person of that name, and that the said defendant by his said pretense of such alleged Grossman patent for a watchman's detective time-piece, and his pretense of his alleged sole agency therefor, is endeavoring to hide his infringement of your orator's rights in the premises, and to impose upon the public and sell to the public an imitation of the inventions so patented as aforesaid to your orator, and this to your orator's great and irreparable loss and damage.

And your orator, upon information and belief, further shows that the defendant imports from abroad the said watchman's time detect-
48 ors, or some of them, sold by him in the said northern district and elsewhere in the United States, in infringement of your orator's rights under his said letters patent.

And your orator shows unto your honors that by means of the said unlawful and wrongful acts and infringements above mentioned, by the said defendant committed, he, the said defendant, hath greatly injured and is still greatly injuring your orator, and has deprived and still is depriving your orator of and has prevented your orator from obtaining and receiving the gains and profits from the use of the said improvements, which your orator otherwise and but for the said wrongful acts of the defendant would have obtained and received.

In consideration whereof and for as much as your orator is without adequate and proper relief, except in this court, to the end therefor that the said defendant may, if he can, show why your orator should not have the relief hereby prayed, and may upon his corporal oath, and according to the best and utmost of his knowledge, remembrance, information, and belief, full, true, direct, and perfect answers make to the premises and to all the several matters hereinbefore stated and charged, as fully and particularly as if severally and separately interrogated as to each and every of said matters, and especially:

First. Whether the watchman's time detectors or watchman's detectors, or watchman's detective time-pieces, by whatever name they may be called, sold by the defendant, do not contain, employ, and
49 use the inventions and improvements set forth in your orator's said letters patent, or some of them?

Second. Whether the said watchman's detectors sold by the defendant do not contain or embrace a drum or its equivalent, carrying a removable piece of paper or other material marked or divided off in a convenient number or parts in combination with a chronometer movement or time-piece, and with one or more marking devices, substantially the same as described in your orator's said reissued letters patent No. 3869?

Third. Whether the said watchman's detectors sold by the defendant do not contain or embrace the combination of marking devices fastened internally to a time-piece, with a watch movement and with a series of keys and a surface for receiving marks, substantially the same as described in said reissued letters patent No. 3869?

Fourth. Whether the said watchman's detectors sold by the defendant do not contain or embrace a false revolving dial or its equivalent in combination with a stationary index or its equivalent, and spring points, constructed and operating substantially as described in your orator's letters patent No. 48048?

Fifth. Whether the said defendant does not pretend and hold out to the public and advertise by circular or otherwise that he is agent in the United States for the Grossman patent watchman's detective time-piece, and whether the detectors sold by him under that name or under such pretended agency do not contain substantially the same
50 devices mentioned in the above interrogatories, first, second, third, and fourth?

Sixth. Whether there are any letters patent of the United States known as the Grossman patent for watchman's detective time piece, and whether the United States have ever issued any such patent to M. Grossman; and, if yea, when?

Seventh. What part of the inventions or improvements set forth and patented in your orator's said letters patent are not contained and used in the watchman's detectors sold by defendant?

And that the defendant may set forth how many of such watchman's time detectors he has sold by himself or his agents, and to whom the same were sold and at what price, and where the defendant obtained the same, and what profits the defendant has made thereon.

And your orator prays that said defendant may be compelled to account for and pay over to your orator the profits by him acquired and the damages sustained by your orator from the unlawful acts of the defendant, and that said defendant, his agents, servants, attorneys, and workmen, and each and every of them may be retained and enjoined by the order of this court from directly or indirectly making, constructing, using, vending, delivering, or putting into use, or in any manner counterfeiting or imitating the said inventions or improvements patented in said letters patent of your orator, or either of them, or any part
51 thereof; and that all such infringing detectors or articles in the possession of defendant may be forthwith destroyed or delivered up to your orator, and that the defendant may be decreed to pay the costs of this suit.

And that your orator may have such other or further relief as to this honorable court shall seem meet, and as shall be agreeable to equity and good conscience.

May it please your honors to grant unto your orator the writ of injunction issuing out of and under the seal of this honorable court, commanding, enjoining, and restraining the said defendant, his agents, attorneys, servants, and workmen, as is hereinbefore in that behalf prayed.

May it please your honors to grant unto your orator the writ of subpœna issuing out of and under the seal of this honorable court, directed to the said defendant, D. Valentine, commanding him, by a certain day and under a certain penalty therein expressed, to be and appear in this honorable court, then and there to answer the premises, and to stand to and abide by such order and decree as may be made against him, and your orator will ever pray, etc.

(Signed) J. E. BUERK.
(Signed) J. VAN SANTVOORD,
Solicitor for Complainant and of Counsel.
41 *Park Row, New York City.*

52 The defendant is required to answer the interrogatories numbered respectively first, second, third, fourth, fifth, sixth, and seventh.

(Signed) J. VAN SANTVOORD,
Solicitor for Complainant and of Counsel.

UNITED STATES OF AMERICA,
City of New York, Southern District of New York, ss:

Jacob E. Buerk, the complainant in the foregoing complaint named, being duly sworn, deposes and says that he has read the foregoing bill of complaint by him subscribed, and knows the contents thereof, and that the same are true of his own knowledge, except as to those matters therein stated on information and belief, and as to those matters he believes it to be true.

And he further deposes and says that he believes that the said John Bürk, in said bill of complaint named, was the first and original inventor or discoverer of the invention and improvement patented by the reissued letters patent 3869, as set forth in the said bill of complaint; and he further deposes and says that he verily believes himself, deponent, to have been the first and original inventor or discoverer of the invention or improvement patented to him by the said letters patent No.
53 48048, as set forth in said bill of complaint, and that the said inventions have not, to the best of his knowledge and belief, been in use or been described before the invention or discovery thereof respectively by the said John Bürk and by said deponent.

(Signed) J. E. BUERK.

Subscribed and sworn to before me this 5th day of May, 1870.

(Signed) R. E. STILWELL,
U. S. Commissioner for the Southern District of New York.

54 SCHEDULE A.

U. S. circuit court, southern district of New York. In equity.

JACOB E. BUERK
against
LUDOLPH PORTONG, SURVIVING DEFENDANT.

Considering the proofs taken by the complainant in this action, I hereby admit the validity of his said letters patent, and I hereby waive and abandon further defense herein, and I hereby consent that the said complainant take and enter his decree for an injunction, according to the prayer of his bill of complaint herein, and that this honorable court adjudge and decree that such injunction do issue against me, and that the damages for the infringement charged in said complaint, and proven in said proofs, be assessed and stated in such decree at the sum of twenty-five dollars and the costs of complainant, including Examiner R. E. Stilwell's fees and charges for taking the testimony and proofs at one hundred and twenty-five dollars.

(Signed) LUDOLPH PORTONG,
Surviving Defendant.

NEW YORK, *April*, 1869.

A copy.
[L. S.] (Signed) KENNETH G. WHITE, *Clerk.*

55 EXHIBIT E.

In the circuit court of the United States, northern district of New York. In equity.

JACOB E. BUERK
vs.
DENNIS VALENTINE.

I.

The answer of Dennis Valentine to the bill of complaint of Jacob E. Buerk, complainant.

This defendant, now and at all times hereafter saving and reserving unto himself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections in the said complainant's said bill of complaint contained, for answer thereunto or unto so much and such parts thereof as this defendant is advised is or are material or necessary for him to make answer unto, this defendant answering saith:

II.

He admits the residence and citizenship of the parties, as stated in said bill of complaint: and that letters patent of the United States were granted to one John Buerk, and the same were twice reissued at the times stated in said bill; and also that letters patent of the United States were issued to the complainant at the time stated in the bill; but this defendant denies that either of the said patentees was the original and first inventor of the watchman's time detector described in said letters patent respectively, and he claims and insists that both of said alleged inventions are fully anticipated by the inventions and publications of other parties, and that the same had been patented or described in printed publications prior to each of their supposed invention or discovery thereof.

III.

And this defendant, further answering, saith, on information and belief, and he hereby gives notice, that on the 28th day of April, 1827, one Henry Knight obtained an English patent for "Apparatus for in-
56 dicating the attendance of workmen, &c.," numbered 5494, which is published in the bound volume of English patents, under that date and number, and the same is also fully described in "The Engineers' and Mechanics' Encyclopedia, comprehending practical illustrations of the machinery and processes employed in every description of manufacture of the British Empire; by Luke Hebert, Civil Engineer; London, Thomas Kelly, 17 Paternoster Row, 1836." Vol. I, pages 704, 705, and 706; title, Horology.

That in said invention said Knight uses an ordinary dial, marked for twelve hours, which is carried round by an axis passing through its centre, and with such subdivisions for showing smaller portions of time as may be necessary; and within the circle of such revolving dial a corresponding removable paper dial is fixed, which is capable of being set at the same figure, and revolved correspondingly with the said revolving dial, which paper dial is held in place by a circular plate which presses upon

it, and the whole is held down by an ordinary screw-nut at the end of the axis.

At the ordinary position of Fig. XII, extending over the revolving dial, there is a fixed index and marking device combined, which marking device may be made to have a point of contact with the loose paper dial, and which device is operated by springs and levers in an ordinary way, and the same fully contains the combination of a false revolving dial with a stationary index and marking device operating by means of a lever and spring attachment.

IV.

And this defendant, further answering, says, upon information and belief, and hereby gives notice, that a watchman's time detector, known as "Biram's Tell-Tale," is fully described in "Appleton's Dictionary of Machines, Mechanics, Engine Work, and Engineering. New York, D Appleton & Co., 1850." Vol. I, at page 87; title, "Biram's Tell-Tale," and the same article is in the edition of 1861, Vol. I, page 80.

That said detector consists of a drum placed upon the end of the fusee of a time-piece, and made to operate therewith, and around this drum a registering paper is placed, which is divided vertically by twelve equidistant parallel lines, representing the hours, and again subdivided between such lines by finer lines into ten minutes. Upon one side of this drum is a stationary index, to mark the hours, and directly over it is located a pricker, upon which is a stud for the hand to press upon, and supported by a spring, which is intended to return the pricker and stud back to their position when the pressure is removed; and the same contains the combination of a drum carrying a removable piece of paper marked or divided off in a convenient number of parts in combination with a time-piece and a spring-marking device for pricking the paper from the outside inwardly.

V.

And this defendant, further answering, says, on information and belief, and hereby gives notice, that on the 4th day of December, 1852, one John Rowbotham obtained an English patent for an improvement in time-keeping, &c., numbered 957, and published in the volume of English patents under that date and number, in the bound volumes of
57 English patents, in which the inventor attaches a time detector to an ordinary watch, by using the arbor of the hour pinion extended beyond the back plate of the watch, upon which is located and fastened by projecting pins a loose dial of paper, marked with figures in the same manner as the face dial of the watch, and being put in position and held by the projecting pins, the same has a movement imparted to it corresponding with the movement of the hour hand, turning once around in twelve hours.

It is so arranged, that the exterior case or back of the watch is capable of being shut down and securely locked over the loose paper dial, at the same time allowing it to turn around with the hour hand. A key-hole is provided in a suitable place, and keys with letters, or other stamping device, for each room to be visited, are provided and securely fastened in their appropriate rooms. These keys are dipped in ink, or other coloring matter, and each marks the room visited by the watchman in the order in which they are placed and used.

VI.

And this defendant, further answering, says, upon information and belief, and hereby gives notice, that in a printed publication, having the following title (and to be found in the Library of the Patent Office at Washington), "Polytechnisches Centralblatt—Unter Mitwirkung von Dr. J. A. Hülsze und W. Stein, Professoren an der K. Polytechnischen Schule in Dresden, herausgegeben von Dr. G. H. C. Schniderman und C. T. H. Bötcher, Professoren an der K. Gewerbschule zu Chemnitz. Ein und zwanzigster Jahrgang, für das Jahr 1855, neue Folge neunter Jahrgang, Leipzig," under date of February 15, 1855, page 215—title (translated), Portable Control Watch—a watchman's time dectector is described substantially as follows: In a hanging leather pocket there is an enclosed case, of which the officer controlling the watchman keeps the key. In this case is a watch, through whose movement a disk set thereon is put in rotation, which disk has upon it, as the dial of the watch, an hour and minute division, and accurately follows the motion of the hands of a time-piece. Below this disk there is a second disk, with a short pin which goes through a corresponding hole in the upper disk, so that the two disks cannot turn independently. The upper disk is removable, and between the two disks is laid a paper disk of somewhat greater diameter than the metal disks. For cutting out these paper strips, there is provided a special iron plate, and for punching the central opening through which the axis of rotation of the metal disks go, there is a punch pin. Opposite to the uppermost point of the metal disks corresponding to the Fig. XII of the fixed dial, there is a bridge, or fixed index, with a slit which clasps over the paper disk. In the middle of this slit, when moved by a certain mechanism, there rises up a sharp pin, fastened to a spring, and makes a small hole in the paper disk. As the point of this pin is always in the same place compared with the paper disk at the Fig. XII of the fixed dial plate, the paper disk is made to follow the hour-hand of the watch; it follows that one is always able exactly to determine from the hole struck by the pin when it was made.

The mechanism that serves to lift up the pin to perforate the paper, has still another contrivance, by means of which the spring which holds the pin can so be moved that the pin perforates its hole at different distances from the centre of the metal disk. The motion of the said mechanism is made by peculiar keys, which are put in from the outside through the watch case, and turned around. They keys are
58 so arranged that by each one of them a different position is given to the pointed pin, as regards its distance from the centre of the metallic disk; they have differently arranged bits, or wards, and for each one there is an especial hole provided. If now in the first hole, the key No. 1, fitting to it, is introduced and turned around, a hole is perforated in the paper in close proximity to the metal disk. The putting in and turning the keys Nos. 2, 3, 4, 5, &c., insures the perforation of the paper disk in a corresponding greater distance from the metal disk. One is, therefore, in a condition to determine from the holes in the paper disk, beside the time of perforation, also the number of the key by which the perforation was made. If the keys, which for this purpose are fastened to chains, are put in their places which at night are to be visited by the watchman, the watch wound up and going, but the case closed, the watchman carries the watch with him, and visits in order the appointed places, so that, providing he puts in the key there provided, and then turns it around, so must the paper disk show whether, when, and in what order the respective localities have been visited.

Accordingly, it can be determined—

1. At what time the watchman has visited the places prescribed to him.

2. Whether he has observed the prescribed order of visits, or what departures therefrom have taken place.

3. How long a time he has spent in going from one to another.

4. How often, during one watch, he has repeated his visit.

And which has at the bottom of such printed publication the following, "(Eisenbahnzeitung, 1854, No. 50.)"

VII.

And this defendant, further answering, says, upon information and belief, and he hereby gives notice, that on the 5th day of February, 1864, a printed report was published in the proceedings of the Leipsic Polytechnic Institute, No. 4, pages 40 and 41, stating that Mr. Zachariä had presented a new watchman's detector constructed by him, in which report the machine of said John Burk was described, and the statement made that Mr. Zachariä, instead of the long strip of paper used by Buerk, used a round paper dial fastened in the watch, in which the punctures representing the different stations were made. And this defendant is further informed and believes that about that time said Zachariä began to allow to one Grossman, of Saxony, a manufacturer of watchman time detectors, to use said invention, and they were called "Grossman's Patent Watchman's Detective Time-piece," and became known to the trade by that name.

VIII.

And this defendant further says, upon information and belief, that the said John Burk, at the time he procured his first letters patent of the United States, in 1861, and the first reissue thereof in 1865, well knew that he had obtained a French patent for precisely the same thing in 1856, and in neither of his applications for the same did he make any allusion to said French patent, as required by the laws of the United States, and this defendant charges the truth to be that the said John Burk thereby intended to commit a fraud upon the Government of the United States by taking both said original patent and the first reissue for the term of fourteen years from the first day of January, 1861,
59 and that the same were void, and must be deemed to have been taken after said John Buerk had abandoned said invention to the public; and this defendant further claims and charges the truth to be that said John Burk, for more than two years before the application was filed for his said patent, allowed the same to go into public use, or on sale, and had thereby abandoned the same; and this defendant further claims and insists that before the last reissue of said letters patent, when for the first time said French patent is referred to, and the United States patent, dated back to the issue of said French patent, said invention had for more than two years been in public use and on sale, and the same had thereby been abandoned to the public, and that said last resisue was also void.

IX.

And this defendant, further answering, upon information and belief, says that he denies that the said John Burk, or the complainant on his

behalf, made the said surrenders and procured said reissues of said letters patent, because the previous letters patent which were surrendered had issued through inadvertence and mistake, as alleged in said bill of complaint; but he charges the truth to be that said John Burk and the complainant procured the last reissue expressly for the purpose of wiping out, if possible, the previous fraud upon the Government of the United States, and that both of the same were intended, if possible, to so vary the claims as to cover the watchman's time detectors made by the defendant, and of which the complainant well knew that neither he nor said John Burk was the inventor.

X.

And this defendant further says that in the instrument made by him he has substantially followed the one made by Grossman, as aforesaid, and which he understands is the same shown by Mr. Zachariä at the proceedings of the Leipsic Polytechnic Institute, and he calls it by the same name, as a trade mark or designation only. That the same is not made in imitation of either said John Burk's instrument or that of the complainant. That this defendant does not use the drum and strip of paper described by said John Burk in his last reissued letters patent, but a paper dial such as had long been in use in time detectors, as above shown, and he attaches the paper dial to the watch movement in substantially the same manner as had long been done by other parties, and he uses a main arbor, metal disks, pins, and a circular groove to hold the paper dial in position convenient for marking and changing and revolving with the hour movement, said paper dial being located outside of the bottom plate of the time-piece. And the apparatus for holding said paper dial in position is different from that employed by the said John Burk in holding his drum and strip of paper in position. That in the machine made by defendant, he places the marking device in the cover of the case which contains the watch, where the same is fully exposed when the box is open, and is readily accessible for examination or repairs, and the same marks the dial from the outside inwardly, in the same manner as shown in the above device described in the Polytechnic Centralblatt; and defendant in like manner uses a bridge with pin holes therein for the spring points to pass into after they have made their perforations through the paper, and the paper dial is made to pass over this bridge, and receive its perforations from the marking devices in the cover; and defendant has no stationary index, but simply uses an arrow engraved on the bridge outside of the radius of the paper dial to denote the movement of the paper dial, all of which is exposed to view when the watch is open, which arrangement is entirely different from that of either said John Burk or the complainant, and is a different arrangement of old elements described, as aforesaid, before either of the inventions set forth in the bill of complaint. And defendant denies that he has infringed either of the patents set forth in the said bill of complaint.

XI.

And this defendant further says, in answer to the complainant's first special interrogatory, that the instrument made and sold by him, and referred to in said bill of complaint, does not contain, and in making the same he does not use or employ the inventions or improvements set

forth in either of said letters patent, or any of them, as claimed by the said patentees.

And in answer to the second special interrogatory he says that in the instrument made and sold by him he used a removable paper corresponding with the hours and minutes of a watch; but the same was not, nor at the time of the application for either of the patents, set forth in the bill, as defendant has shown by the references aforesaid; that he does not use a drum, or its equivalent, as is intended to be inferred in said special interrogatory, in combination with a chronometer movement or time-piece, and with marking devices, as described in said reissued letters patent.

And in answer to the third special interrogatory the defendant says that the watchman's time detectors sold by him do not contain the combination of marking devices fastened internally to a time-piece, with a watch movement, and with a series of keys and a surface for receiving marks, substantiantially the same as described in said Reissue No. 3869.

That in the instrument made by the defendant the marking devices are fastened to the lid of the time-piece, as above stated, and externally thereto; and in marking the time, the defendant punctures the dial from the outside inwardly, as above shown, and not from the inside of the time-piece outwardly, as is done by the complainant and claimed by him.

In answer to the fourth special interrogatory the defendant says that the spring-points described in the complainant's letters patent are fastened to the time-piece itself internally, so as to make their impressions from the inside outwardly; and the complainant makes that the ground of one of his claims.

Whereas, in the instrument made by the defendant, the marking devices are situated and make their impressions as fully described above. That the stationary index in the complainant's patent is made with a slot beneath it and fixed at the Figure XII.

Whereas in the instrument used by the defendant, he uses a bridge under the paper dial, as above stated, with simply an engraved arrow to show the movement of the paper dial, so situated that the points of the marking device will fall into the holes made in such bridge after they have pierced the paper; and he denies that in making his instrument he uses the combination stated in said fourth special interrogatory.

To the fifth special interrogatory, the defendant says that in the year 1867 he received from a man named Grossman, living in Saxony, a time detector substantially in the form now made by him; and defendant was informed by said Grossman that he made the watch portions of his device, and that a man named Zachariä made the detector portion, and it was called "Grossman's Patent Watchman's Detective Time Piece";
61 that defendant was also informed that said Zachariä made the said detectors as early as the year 1863, and that the same were described in the proceedings of the Leipsic Polytechnic Institute as early as February, 1864, as above stated, of which defendant was furnished with a copy to show its untility; and that since he so received the first instrument he has sold and advertised the same by that name, but he denies that in doing so he has infringed upon the complainant's several letters patent as aforesaid.

To the sixth interrogatory the defendant says that he does not know whether said Grossman ever obtained any patent in the United States or not. That he has never heard of any, and from the manner in which the instruments were first made he presumes there never was.

And to the seventh special interrogatory the defendant says that he denies that any part of the complainant's alleged patented improvements are contained in the instruments made and sold by him.

And this defendant further says that as to each of the other matters stated in said bill, not hereinbefore specifically answered, this defendant has not sufficient knowledge or information to form a belief, and he denies the same.

All which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and he humbly prays to be hence dismissed with his reasonable costs and charges in this behalf sustained.

C. W. SMITH,
Defendant's Sol'r, Syracuse, N. Y.

N. B. SMITH,
Of Counsel.

UNITED STATES OF AMERICA,
Northern District of New York,
City and County of New York, ss:

On this 30th day of July, 1870, before me came Dennis Valentine, aforesaid, to me personally known, defendant in the foregoing answer named, who, being by me duly sworn, did depose and say that he has read the said answer subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be on his information and belief, and as to those matters he believes it to be true.

DENNIS VALENTINE.

Sworn to before me this 30th day of July, 1870.

FRANCIS B. AUT,
Notary Public, N. Y. County.

UNITED STATES OF AMERICA,
Northern District of New York, ss:

I, Charles Mason, clerk of said court, do hereby certify that I have compared the foregoing answer, together with the endorsements thereon, with the original now on file in my office, and that it is a correct and true copy thereof, and of the whole of such original answer.

Witness my hand and official seal, at my office in Utica, this 10th day of December, A. D. 1872.

[L. S.] CHARLES MASON, *Clerk.*

62 EXHIBIT F.

Circuit court of the United States, northern district of New York. In equity.

JACOB E. E. BUERK }
ag't
DENNIS VALENTINE. }

The replication of Jacob E. Buerk, complainant, to the answer of Dennis Valentine, defendant.

This replicant, now and at all times saving and reserving to himself all and all manner of benefit of exception which may be had or taken to

the manifold insufficiencies of the said answer, for replication thereto says that he will ever maintain and prove his bill of complaint to be true, certain, and sufficient to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this replicant; without this, that any other matter or thing whatsoever in said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed and denied, is true. All which matters and things this replicant is and will be ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays as in and by his bill he has already prayed.

J. VAN SANTVOORD,
Complainant's Solicitor, and of Counsel.

NEW YORK, *August 8th*, 1870.

63 EXHIBIT G.

Circuit court of the United States for the northern district of New York.
In equity.

JACOB E. BUERK
vs.
DENNIS VALENTINE.

WOODRUFF, *Circuit J.:*

This is a suit brought to restrain the alleged infringement of two patents and for an account of gains and profits accruing to the defendant by such infringement, and for damages.

The patent first set out in the bill of complaint was based upon an alleged invention by John Bürk, of Schwenningen, in the kingdom of Würtemberg, made prior to the first day of January, 1861, and assigned to the complainant December 3d, 1860. The original patent was granted to the complainant January 1, 1861, and purported to grant to him the exclusive right to make, use, and sell, etc., for fourteen years. This patent was surrendered, and was reissued on the 22d of August, 1865, for the residue of the term of fourteen years from the 1st of January, 1861. John Bürk, the alleged inventor, having, as early as October 29, 1856, obtained a patent for his invention from the government of France, it was perceived that the patent issued in the United States to the complainant had erroneously granted the exclusive right for fourteen years from the 1st of January, 1861; the complainant, therefore, again surrendered his patent, and the same was reissued on the 8th of March, 1870, for the term of fourteen years from the 29th of October, 1856, the date of the inventor's French patent.

The patent and such reissues are for "An Improvement in Watchman's Time Detector."

The other patent, alleged in the bill to have been infringed by the defendant, was granted to the complainant himself, as the inventor of an alleged improvement upon the time detector described in the other patent. It was granted on the 6th of June, 1865, for the term of seventeen years thence next ensuing.

The invention described in the first patent as reissued to the complainant in 1870, provided for the watchman a watch, which he carried with him in his rounds, so constructed that by the insertion of a key provided at each of the stations which he was required to visit, he could make

behalf, made the said surrenders and procured said reissues of said letters patent, because the previous letters patent which were surrendered had issued through inadvertence and mistake, as alleged in said bill of complaint; but he charges the truth to be that said John Burk and the complainant procured the last reissue expressly for the purpose of wiping out, if possible, the previous fraud upon the Government of the United States, and that both of the same were intended, if possible, to so vary the claims as to cover the watchman's time detectors made by the defendant, and of which the complainant well knew that neither he nor said John Burk was the inventor.

X.

And this defendant further says that in the instrument made by him he has substantially followed the one made by Grossman, as aforesaid, and which he understands is the same shown by Mr. Zachariä at the proceedings of the Leipsic Polytechnic Institute, and he calls it by the same name, as a trade mark or designation only. That the same is not made in imitation of either said John Burk's instrument or that of the complainant. That this defendant does not use the drum and strip of paper described by said John Burk in his last reissued letters patent, but a paper dial such as had long been in use in time detectors, as above shown, and he attaches the paper dial to the watch movement in substantially the same manner as had long been done by other parties, and he uses a main arbor, metal disks, pins, and a circular groove to hold the paper dial in position convenient for marking and changing and revolving with the hour movement, said paper dial being located outside of the bottom plate of the time-piece. And the apparatus for holding said paper dial in position is different from that employed by the said John Burk in holding his drum and strip of paper in position. That in the machine made by defendant, he places the marking device in the cover of the case which contains the watch, where the same is fully exposed when the box is open, and is readily accessible for examination or repairs, and the same marks the dial from the outside inwardly, in the same manner as shown in the above device described in the Polytechnic Centralblatt; and defendant in like manner uses a bridge with pin holes therein for the spring points to pass into after they have made their perforations through the paper, and the paper dial is made to pass over this bridge, and receive its perforations from the marking devices in the cover; and defendant has no stationary index, but simply uses an arrow engraved on the bridge outside of the radius of the paper dial to denote the movement of the paper dial, all of which is exposed to view when the watch is open, which arrangement is entirely different from that of either said John Burk or the complainant, and is a different arrangement of old elements described, as aforesaid, before either of the inventions set forth in the bill of complaint. And defendant denies that he has infringed either of the patents set forth in the said bill of complaint.

XI.

And this defendant further says, in answer to the complainant's first special interrogatory, that the instrument made and sold by him, and referred to in said bill of complaint, does not contain, and in making the same he does not use or employ the inventions or improvements set

forth in either of said letters patent, or any of them, as claimed by the said patentees.

And in answer to the second special interrogatory he says that in the instrument made and sold by him he used a removable paper corresponding with the hours and minutes of a watch; but the same was not, nor at the time of the application for either of the patents, set forth in the bill, as defendant has shown by the references aforesaid; that he does not use a drum, or its equivalent, as is intended to be inferred in said special interrogatory, in combination with a chronometer movement or time-piece, and with marking devices, as described in said reissued letters patent.

And in answer to the third special interrogatory the defendant says that the watchman's time detectors sold by him do not contain the combination of marking devices fastened internally to a time-piece, with a watch movement, and with a series of keys and a surface for receiving marks, substantiantially the same as described in said Reissue No. 3869.

That in the instrument made by the defendant the marking devices are fastened to the lid of the time-piece, as above stated, and externally thereto; and in marking the time, the defendant punctures the dial from the outside inwardly, as above shown, and not from the inside of the time-piece outwardly, as is done by the complainant and claimed by him.

In answer to the fourth special interrogatory the defendant says that the spring-points described in the complainant's letters patent are fastened to the time-piece itself internally, so as to make their impressions from the inside outwardly; and the complainant makes that the ground of one of his claims.

Whereas, in the instrument made by the defendant, the marking devices are situated and make their impressions as fully described above. That the stationary index in the complainant's patent is made with a slot beneath it and fixed at the Figure XII.

Whereas in the instrument used by the defendant, he uses a bridge under the paper dial, as above stated, with simply an engraved arrow to show the movement of the paper dial, so situated that the points of the marking device will fall into the holes made in such bridge after they have pierced the paper; and he denies that in making his instrument he uses the combination stated in said fourth special interrogatory.

To the fifth special interrogatory, the defendant says that in the year 1867 he received from a man named Grossman, living in Saxony, a time detector substantially in the form now made by him; and defendant was informed by said Grossman that he made the watch portions of his device, and that a man named Zachariä made the detector portion, and it was called "Grossman's Patent Watchman's Detective Time Piece";

61 that defendant was also informed that said Zachariä made the said detectors as early as the year 1863, and that the same were described in the proceedings of the Leipsic Polytechnic Institute as early as February, 1864, as above stated, of which defendant was furnished with a copy to show its untility; and that since he so received the first instrument he has sold and advertised the same by that name, but he denies that in doing so he has infringed upon the complainant's several letters patent as aforesaid.

To the sixth interrogatory the defendant says that he does not know whether said Grossman ever obtained any patent in the United States or not. That he has never heard of any, and from the manner in which the instruments were first made he presumes there never was.

And to the seventh special interrogatory the defendant says that he denies that any part of the complainant's alleged patented improvements are contained in the instruments made and sold by him.

And this defendant further says that as to each of the other matters stated in said bill, not hereinbefore specifically answered, this defendant has not sufficient knowledge or information to form a belief, and he denies the same.

All which matters and things this defendant is ready and willing to aver, maintain, and prove, as this honorable court shall direct, and he humbly prays to be hence dismissed with his reasonable costs and charges in this behalf sustained.

C. W. SMITH,
Defendant's Sol'r, Syracuse, N. Y.

N. B. SMITH,
Of Counsel.

UNITED STATES OF AMERICA,
Northern District of New York,
City and County of New York, ss:

On this 30th day of July, 1870, before me came Dennis Valentine, aforesaid, to me personally known, defendant in the foregoing answer named, who, being by me duly sworn, did depose and say that he has read the said answer subscribed by him, and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters therein stated to be on his information and belief, and as to those matters he believes it to be true.

DENNIS VALENTINE.

Sworn to before me this 30th day of July, 1870.

FRANCIS B. AUT,
Notary Public, N. Y. County.

UNITED STATES OF AMERICA,
Northern District of New York, ss:

I, Charles Mason, clerk of said court, do hereby certify that I have compared the foregoing answer, together with the endorsements thereon, with the original now on file in my office, and that it is a correct and true copy thereof, and of the whole of such original answer.

Witness my hand and official seal, at my office in Utica, this 10th day of December, A. D. 1872.

[L. S.] CHARLES MASON, *Clerk.*

62 EXHIBIT F.

Circuit court of the United States, northern district of New York. In equity.

JACOB E. E. BUERK
ag't
DENNIS VALENTINE.

The replication of Jacob E. Buerk, complainant, to the answer of Dennis Valentine, defendant.

This replicant, now and at all times saving and reserving to himself all and all manner of benefit of exception which may be had or taken to

the manifold insufficiencies of the said answer, for replication thereto says that he will ever maintain and prove his bill of complaint to be true, certain, and sufficient to be answered unto, and that the said answer of the said defendant is uncertain, untrue, and insufficient to be replied unto by this replicant; without this, that any other matter or thing whatsoever in said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed and avoided, traversed and denied, is true. All which matters and things this replicant is and will be ready to aver, maintain, and prove, as this honorable court shall direct, and humbly prays as in and by his bill he has already prayed.

J. VAN SANTVOORD,
Complainant's Solicitor, and of Counsel.

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The patent first set out in the bill of complaint was based upon an alleged invention by John Bürk, of Schwenningen, in the kingdom of Würtemberg, made prior to the first day of January, 1861, and assigned to the complainant December 3d, 1860. The original patent was granted to the complainant January 1, 1861, and purported to grant to him the exclusive right to make, use, and sell, etc., for fourteen years. This patent was surrendered, and was reissued on the 22d of August, 1865, for the residue of the term of fourteen years from the 1st of January, 1861. John Bürk, the alleged inventor, having, as early as October 29, 1856, obtained a patent for his invention from the government of France, it was perceived that the patent issued in the United States to the complainant had erroneously granted the exclusive right for fourteen years from the 1st of January, 1861; the complainant, therefore, again surrendered his patent, and the same was reissued on the 8th of March, 1870, for the term of fourteen years from the 29th of October, 1856, the date of the inventor's French patent.

The patent and such reissues are for "An Improvement in Watchman's Time Detector."

The other patent, alleged in the bill to have been infringed by the defendant, was granted to the complainant himself, as the inventor of an alleged improvement upon the time detector described in the other patent. It was granted on the 6th of June, 1865, for the term of seventeen years thence next ensuing.

The invention described in the first patent as reissued to the complainant in 1870, provided for the watchman a watch, which he carried with him in his rounds, so constructed that by the insertion of a key provided at each of the stations which he was required to visit, he could make

within the watch a record indicating the several stations visited, the precise time of each visit, and, of course, the order in which the visit to the respective stations were made.

64 The watch was provided with a lock, so that the watchman had no access to its interior; and as the record of each station could only be made by the peculiar key which belonged to such station, and was there secured and made fast, the watchman could make no false record or deceive his employers.

Without entering into unnecessary detail, it will be sufficient in the first instance to say that this was effected by using a watch or small portable clock movement enclosed in a strong case, the lid of which could be locked, the employer retaining the key. To the arbor of the watch upon which the hour hand is placed, a drum was attached so as to revolve as the hour hand revolves. The circumference of the drum was a little greater than an ordinary watch-dial, and its surface was of width suitable to receive the paper next mentioned.

Around the circumference of the drum was placed a strip of paper. By marks thereon, the paper was divided into spaces corresponding in their position, relatively to the center of the watch, to the hours and minutes of the watch-dial; and by lines drawn lengthwise, it was also divided into several spaces corresponding in number to the number of markers to be used, as next mentioned.

Exterior to the watch movement, but within the case, there were placed several small steel bars or springs, terminating each in a point bent at right angles, while the other end was fixed firmly to the circular plate or frame of the watch movements. These springs were placed and held in a gang, one above another, so that the points were in a row, perpendicular to the watch-face, at and exterior to the point on the dial of the watch indicating the hour of twelve, and each point directly opposite one of the longitudinal spaces in the strip of paper around the circumference of this drum. In this position it is obvious that, if the point of one of the springs was pressed inward upon the revolving drum, it would perforate the paper within its proper longitudinal division, and the perforation would show the hour and minute at which it was made. And in order to permit such perforation without injuring the steel point, the periphery of the drum was channeled by narrow longitudinal grooves beneath each of the said longitudinal spaces in the paper placed thereon.

Keys were provided which varied from each other in the location of the bits thereon, in the width of such bits, and also in the number of bits, in such wise that, one of the keys being inserted in a key-hole contiguous to the steel springs, and turned, the bit of the key would press one of the springs inward upon the paper and make one perforation; another key would press two springs inward and make two perforations; another three, and so on; and one key would press the first of the springs, another the second, another the third, and so on; and one key would press inward the first and second, another the first and third, another the first and fourth, another the second and third, another the second and fourth, another the third and fourth, another the third and fifth, and so on through all the variations of which the number of springs used were susceptible.

And one key being fastened at each station, the marks or punctures which would indicate a visit to that station could not be made by any other key, nor by any means but by an actual visit to that station and the use of the key there suspended.

The claims in the specification annexed to the reissued patent for this invention are for:

1st. The drum, carrying a removable piece of paper, or other suitable material, marked or divided off in a convenient number of parts,
65 in combination with a chronometer movement or time-piece, and with one or more marking devices, substantially as and for the purpose set forth.

2d. The combination of the marking devices, fastened internally to a time-piece, with a watch movement, and with a series of keys and a surface for receiving marks substantially as described.

The invention described in the second patent and claimed to be the invention made by the complainant himself, was for the same purpose as the other, and is only claimed as an improvement thereon.

In its main features it consisted in removing the drum entirely and the paper wound thereon. It attached a circular disk to the arbor of the hour hand to revolve therewith, and attached thereto a circular flat paper dial of larger diameter, divided by radial lines corresponding with the hours and minutes of a watch dial, and having a portion of its exterior divided into spaces by circular lines drawn at uniform distances, such spaces corresponding, as the paper disk revolved, to the location of the steel points next mentioned.

Beneath the circular plate forming the support or frame of the watch movement the gang of steel bars or springs was firmly attached to such plate in such position that the points were in a straight line radial to the center, and over each point was a hole in the said plate, so that each spring could be pushed upward, the point thereof passing through the hole and upwards sufficiently to perforate the revolving paper dial in the space corresponding to the point of the spring so raised. Over the row of holes was placed what is called a fixed index, a small strip of metal fastened to the circular plate or frame of the watch and extending towards the center of the disk, raised sufficiently above the revolving disk to permit the paper dial to revolve freely under it and over the holes through which the spring-points were to rise; and to prevent injury to these points holes were made in its under surface, opposite each point, into which the points, as they rose and perforated the paper, would enter, and then, by the power of the spring, be immediately withdrawn to their respective position below such plate.

The keys were the same as used in the former invention and were inserted in a key-hole so located that the bits of the keys, when turned, forced the springs upwards instead of inwards, as before, the springs lying flat upon or near the inner surface of the circular plate or frame before mentioned.

By this means the perforation was made in the exterior portion of the revolving paper dial, and the place of perforation indicated the precise hour and minute it was made, and the particular key by which it was made, with all the variations above stated as to the former patent; and the perforations were all from beneath the paper upward through it.

The claim of this patent is—

1st. The use of the false revolving dial in combination with the stationary index and spring-points, constructed and operated substantially as and for the purpose set forth.

2d. Producing the perforations on the paper dial or its equivalent from the inside out, instead of from the outside in, as before.

The defendant imports and sells a watchman's time detector which serves the same purpose as those above described, and is operated
66 by keys having like bits, and varied in the same manner in the location of the bits. It is susceptible of like variations in the

form of the keys to adapt it for use at numerous stations; it makes the record by perforations in a revolving paper dial attached to a circular disk fastened to the arbor of the watch on which the hour hand is placed. That paper dial is divided in the same manner as is above described, and the perforations are made by the points of steel springs, arranged in a like gang, side by side, moved by the bit of the respective keys in like manner.

The leading feature in which it differs from the time detector, as alleged to be improved by the devices mentioned in the complainant's second patent, is this: The gang of steel springs, instead of being placed beneath the circular plate or frame of the watch movements, is attached to the lid of the case of the instrument immediately over the location of the gang of springs in the complainant's detector. When closed the line or row of points is in the same straight line radially from the center, and in order to perforate the paper dial they must be pressed downward instead of upward; to that end the key-hole is placed in the side of the lid over the gang of springs, instead of being placed in the body of the case below the springs, as in the detector of the complainant.

Instead of the complainant's fixed index placed over the holes through which, in his detector, the points rise to perforate the paper, there is, in the same location, a row of holes in the plate or frame of the movements, into which the points enter to protect them from injury when making the perforation; the necessity of making such fixed index in such manner that it will sustain the paper during the act of perforation being obviated by making the motion of the springs downward, whereby the plate of the watch performs the same office during such act; a mark in the form of an arrow is made on the plate or frame opposite the row of holes which performs the office of the index in indicating the point corresponding with the figure twelve of the watch dial as a guide in setting the paper dial when the watch is placed in the hand of the watchman.

There are some minor differences in the manner in which the paper disk is attached to the revolving disk upon the arbor, but they are deemed to be very clearly not of the substance of the complainant's invention; and the examples which are produced as exhibits show also a watch dial and hands on the defendant's detector which does not appear in the complainant's; but that is a matter which is not supposed to be indicated in the complainant's patent, or to be in itself any infringement.

This, however, involves another variation in the marking and figuring of the paper dial, as the complainant's dial is placed on what is ordinarily the face of the watch, and revolves as the hour hand revolves, the figures thereon denoting the time (and passing successively under the index where perforations may be made), are necessarily printed in an order in reverse of the figures on a watch dial—while in the defendant's detector, as the paper dial is put on the other end of the arbor (*i. e*, opposite the face of the watch), the figures on the paper dial are printed in the same order as on the face of the watch, but the motion thereof, relatively to the points for perforation is reversed, the results of the revolution, in respect to the record of the time, being therefore the same in each.

If in either of these points of difference the detector of the defendant is no infringment that alone will not protect the defendant from liability if the complainant's patents are valid, and the devices protected thereby are in substance incorporated in such detector.

67 It is, I think, entirely clear that John Bürk was the inventor of the detector for which the patent was granted to the complainant as his assignee.

No one of the prior devices mentioned in the proofs, contains a combination of spring points to be operated upon by a series of keys (susceptible of numerous combinations), with a watch movement all in one case carried by the watchman, and by successive punctures indicating the particular key, and thereby the station at which it was made. Still less it is true that any prior device was constructed in the same manner or by the use of mechanical equivalents. Most of the detectors were stationary, and operated in an entirely different manner. Byram's tell-tale was operated by the pressure of the hand of the person desiring to register his presence on a pin or button, exterior to the instrument. He could make that record wherever the instrument might be, and nothing in the record indicated the visit of the watchman to more than the single station where it was. He could make as many records as he saw fit without at any time moving from the one place.

Rowbotham's device was simply to print upon a revolving paper, within the case of the watch, the impression of various type, keys or stamps, dipped in colored ink from a reservoir in the watch case. The differing form of the keys or stamps at the successive stations may have been useful in disclosing the time and place where made, and so disclosing the fact and the time of his visit to each station. This may have been more or less efficient in accomplishing the purpose of a detector; but as a machine or mechanical structure, it was not like the plaintiff's. Making a prior device, which will serve the like useful purpose, is not necessarily anticipating an invention.

Where the mechanical means employed are different, and the mechanical result is different, one does not anticipate the other; if this were not so, an inventor who had made a machine which would serve a useful purpose would exclude all others from the right to a patent for other mechanical devices or combinations producing the like useful result in other modes, or producing a different mechanical result which served the same purpose.

This is also true of a device shown in the evidence as described in the German publication called "The Polytechnisches Central Blatt fur 1855." There is much obscurity in the description there given, and it is at least doubtful whether it is sufficiently clear and specific to enable a skillful mechanic to construct the instrument by that mere description. Probably by the use of inventive skill he might contrive auxiliary devices supplying the omissions, so that the instrument could be operated; but whether when completed, the instrument would be the same in respect to those devices as the machine of which such imperfect description is given, is at least very doubtful. If, however, he should succeed, the instrument would in mechanical construction and operation, be unlike the complainant's detector. It would have had one marker; that marker must be moved from its ordinary position at each station visited; for this purpose it requires as many key-holes as there are stations; the key at each station operating upon it in a different manner. The number of keys which it would be possible to apply to the marker must of necessity be very few, and of consequence the number of stations at which it could be used must be small. It has no capacity, by combinations of marks or punctures, to furnish a record at many stations, either by one key at each or through the same key-hole.

68 And the minutes of the Leipsic Association in 1864, not only recognize the invention of John Bürk, but they are subsequent to

his foreign patent and subsequent to the original patent of 1861, granted to the present complainant. In that view it is not necessary to decide whether in fact it was such a publication as would in any event impair the validity of a patent issued in this country after its date.

I do not deem it necessary to decide how far the invention described in the patent granted to the complainant in June 1865, (in which the circular paper dial is substituted for the paper strip described by John Burk), was anticipated by the invention of John Bürk. Some of the testimony seems to indicate that the substitute of the revolving disk for the drum, and the circular dial for the strip of paper around the drum, together with the adaptation of the spring points by an arrangement which made the perforations of the paper disk practicable, were but a substitution of merely equivalent devices. I certainly cannot express any concurrence in that view of the two patents; but for the purposes of this case it is enough to say that if such changes were the mere use of equivalents, then the reissued patent of 1870 embraces both forms or modes of construction, and the defendant is in nowise aided. The question of infringement will still be, does the defendant's detector infringe either?

Nor can I regard that as seriously questionable. He employs every substantial device in the detector, as now made by the complainant and described in his patent of June 6, 1865, above recited, save only that he places the springs in the lid of the box or case, perforating therewith downward, instead of placing them under the plate or frame supporting the watch movements and perforating therewith upwards, thereby dispensing with the special form of what is called the fixed index, but for which, as an index, serving to point to the hour at which the revolving dial should be set, he substitutes the mark of an arrow at the same point.

Whether this change in the location of the springs is or is not an improvement, it is no part of my duty to say. There is some evidence that it is, because there is no opportunity for the entrance of dust through the key-hole to the works of the watch. On the other hand, the partition in the specimen of the complainant's detector produced in evidence, entirely separates the complainant's springs and the key-hole leading thereto from the watch movements, so that no dust can enter, and obviates the supposed disadvantage. Be that as it may, the mechanical construction is the same in all that constitutes the principle or mode of operating the instrument, and gives it efficiency as a record of the watchman's visits to the several stations.

It violates in terms the second claim of the reissued patent of 1870, and if the paper dial and the revolving disk are equivalents of the drums and strip of paper around its periphery, then it violates the first claim of that patent, and it also violates the first claim of the complainant's patent of June 6, 1865. Reversing its position so that the points perforated doward instead of upward, cannot avoid that claim, notwithstanding by so doing the defendant is able to substitute the mark of an arrow for the stationary index in the complainant's instrument.

As already remarked, the minor specific differences in the means by which the paper dial is held upon the revolving disk, and the like, do not affect the substance of the inventions; if they are improvements, the defendant is at liberty to use them if he obtains a license from the complainant to use his invention.

I am also of opinion, that the error testified to have been a mistake, by which the original patent of 1861 was granted for fourteen years

from that date, cannot affect the complainant's rights under his reissued patent of 1870, whereby that mistake was corrected.

69 Independently of the question whether the reissued patent can be thus collaterally impeached, I think it sufficiently appears that the error was a proper one to be corrected by a reissue, and if so, then the complainant's rights are not other than those of any inventor whose first patent is void, for mistake or error, which is corrected by a reissue. He cannot recover for alleged infringements, prior to the reissue, but may for subsequent infringements. Nor, in such case, will the notoriety or use of the patented invention, after his first application and prior to the reissue, render such reissue void, although the original patent issued on such application was wholly invalid. If I was brought, however, to the conclusion that the complainant could not sustain the reissue on the ground last referred to, it would still remain true that the defendant's detector infringes the first claim of the patent of June 6, 1865.

The complainant is entitled to a decree awarding an injunction and account as prayed in his bill.

United States circuit court, northern district of New York, ss:

70 I, Charles Mason, clerk of said court, do hereby certify that the foregoing is a true and correct copy of opinion of Judge Woodruff in above-entitled cause, as filed in my office March 19, 1872.

Witness my hand and official seal at my office, in Utica, this 6th day of April, A. D. 1872.

[SEAL.] (Signed) CHARLES MASON, *Clerk.*

71 Circuit court of United States, southern district of New York. In equity.

JACOB E. BUERK
ag'st
WILLIAM IMHAEUSER AND THEODORE HAHN, impleaded with Charles Keinath.

NEW YORK, *Wednesday, July* 23, 1873.

Examination of witnesses on behalf of defendants Imhaeuser and Hahn, taken before R. E. Stilwell, U. S. Examiner, &c., for final hearing, under the 67th rule of the Supreme Court of the United States, as amended.

Present, J. Van Santvoord, of counsel for complainant; Keller & Blake, of counsel for defendants Imhaeuser & Hahn.

Counsel for defendants Imhaeuser & Hahn offers in evidence a certified copy of French patent, granted to Jean Baptiste Schwilgue, and Charles Maximilien Schwilgue, dated April 28, 1874, for an instrument entitled marqueur portatif, which is marked Exhibit 1.

It is consented by counsel for both parties, that a copy of said patent, Exhibit 1, may be substituted as such exhibit.

72 JOHN DERRIG, a witness called on behalf of the defendants, being duly sworn, deposes and says as follows:

Q. 1. What is your name, age, residence, and occupation?

A. John Derrig. I am twenty-nine years of age; residence, 7 Sec-

ond street, New York City; and am a translator of French and German.

Q. 2. Did you make a translation of the French patent, Defendant's Exhibit 1, and if yea, will you produce it?

A. Yes; I produced it, and it is marked Defendant's Exhibit No. 2

Q. 3. Have you made a translation of a French patent published in a work entitled Brevet de Invention, granted to Mr. Nolet, dated July 8th, 1847, for a watchman's detector? And if yea, produce the same that it may be made an exhibit in this case.

A. Yes, I have, and produce it.

(Copy produced by witness is marked Defendant's Exhibit 3.)

JOHN DERRIG.

Sworn to before me this 23d day of July, A. D. 1873.

J. N. McINTYRE, a witness called on behalf of the defendants, being duly sworn, deposes and says as follows:

Q. 1. What is your name, age, residence, and occupation?

A. J. N. McIntyre; age, about 38; residence, New York City, and occupation, that of patent attorney and expert in patent cases.

Q. 2. Are you acquainted with the French patent, Defendant's Exhibit No. 1? And if yea, state whether the instrument now produced, and marked Defendant's Exhibit No 4, is a correct represention of the invention described in that patent.

A. I am acquainted with, and fully understand the French patent, marked Defendant's Exhibit No. 1. The instrument marked De-
73 fendant's Exhibit No. 4 is constructed and operates according to the specification and drawing of the said French patent.

Q. 3. Look at the drawing attached to Exhibit No. 3, and state whether it is a correct copy of the engravings, making part of the French patent granted to Nolet, July 8, 1847, and give the title, volume and page of the publication from which such copy was made.

A. It is a true copy of the engraving making part of the French patent of Nolet, and was made under my supervision from plate , volume , of the Brevet de Invention, a work at the Astor Library, in the city of New York.

Q. 4. Have you a correct copy of the description and drawing of an English patent granted to John Rowbotham in 1852, No. 957, for improvement in time-keepers, and apparatus connected therewith; and if yea, will you produce the same, that it may be made an exhibit, and state from what such copy was made?

A. The papers which I now produce embrace true copies of the specification and drawing of said English patent, which copies were made under my supervision, from the records of English patents at the Astor Library, New York City. (Which papers are marked Defendant's Exhibit No. 5.)

Q. 5. Have you a correct copy of the specification and drawings granted to Francis Buckney, for improvement in tell-tale time keepers, No. 1431, for the year 1862; and if yea, will you produce the same, that it may be made an exhibit, and state from what such copy was made?

A. The papers which I now produce embrace true copies of the specification and drawings of said English patent, and were made under my supervision from the records of English patents at the Astor Library, New York City. (Which papers are marked Defendant's Exhibit No. 6.)

Q. 6. Are you acquainted with complainant's patent, Exhibit A, and

with the invention therein described; and with the watchman's time-keepers sold by the defendant?

A. I am.

74 Q. 7. Are you acquainted with the invention described in the French patent, Defendant's Exhibit No. 1, and with the invention described in the Nolet patent, Defendant's Exhibit No. 3, and with the invention described in the English patents, Defendant's Exhibits 5 and 6?

A. I am.

Q. 8. Will you state what, in your opinion, is the invention described in complainant's patent, Exhibit A, and referred to in the claims thereof, and whether you find substantially the same invention, or parts thereof, described and represented in the several descriptions, Defendant's Exhibits Nos. 1, 3, 5 and 6, or either of them? And give your reasons fully for any opinions you may express.

A. In complainant's patent, Exhibit A, the inventor, in pointing out the characteristic features of his supposed invention, refers particularly to the construction and operation of watchman's time detectors, such as had been previously made under a patent granted to John Buerk, January 1, 1861, and particularly describes wherein his invention differs from what was shown and described in said prior patent. He says (referring to time detectors, as made under said prior patent:)

"In that case a strip of paper is used stretched on the circumference of a drum, to which a rotary motion is imparted by a clock or watch movement, and a series of spring points serve to perforate this strip, according to the time when these points are operated by a series of keys of peculiar shape. On the strips are marked the hours corresponding to hours on the dial of the clock or watch, and the time when one or more of the spring points have been actuated can be ascertained after the strip has been taken off. This construction necessitates a drum in addition to the ordinary clock or watch movement, whereby the expense of the mechanism is increassd, and furthermore the operation of applying and removing the strips of paper is tiresome, and requires much care."

The patentee then immediately proceeds to point out how and by what means the objections found in such previously patented detectors are overcome by his improvements, as follows:

75 "These difficulties are avoided by using a clock or watch with a stationary index and revolving dial. On this revolving dial are fastened removable dials of paper or other suitable material, with a series of circles corresponding to the positions of the spring points, and these spring points are concealed under the stationary index."

The patentee then goes on to describe how, by the insertion of any one of the keys, and the turning around of the latter, the paper dial is pierced by one or more of the spring points, and how such piercing of said dial will indicate the time and place visited by the watchman who inserts the key, and says that "the perforations in the paper dial are made from below, under the stationary hand, leaving a slight barb upon the upper surface, and a similar perforation cannot be produced even if the watch or clock be opened, except if the paper dial is taken off."

In the operation of the machine the protruding portion of the false paper dial passes during its revolutions immediately beneath a fixed index or bridge under which is located the gang of perforating points, and this bridge and index being slotted out on its under surface sufficiently to permit the puncturing points to ascend above the level of the paper dial, it follows that when said points are forced upward they pass

through the paper, which latter is held down to the action of the punching points by the said slotted bridge.

From the specification of complainant's patent, and a comparison of the machine therein shown and described with that therein alluded to as having been previously patented, I understand that the invention and improvements made by the patentee consisted:

1st In substituting for the old drum and paper strip placed thereon a paper dial and stationary bridge, or slotted rest, so arranged that the paper dial should pass under the sustaining bridge and index, and so placing the gang of perforating points as to puncture the protruding portion of the said dial during its rotation; and

76 2nd. In the precise or peculiar placement of the perforating points, so that they will pass from beneath, outward, through the paper, leaving a barb or burr on the paper, which cannot be counterfeited by pricking the paper dial from without.

The construction of the perforating device is about the same in the complainant's machine as in the old patent of 1861, but while in the old machine the points were forced against the strip of paper backed up by the drum face, and could not therefore readily perforate or pass through the paper strip, in complainant's machine they are permitted to pass readily through the paper dial, since the latter is not backed by the bridge at that portion where the points strike through.

The first claim of complainant's invention is for "the use of a false revolving dial, E, in combination with the stationary index, D, and spring points *d*, constructed and operated substantially as and for the purpose set forth," and the second claim is for "producing the perforations on the paper dial, or its equivalent, from the inside out, instead of from the outside in, as before."

The first of these claims I understand to refer to that part of complainant's invention which, in my opinion, consists in the use of a paper dial with a stationary bridge and index, and the perforating points—the whole so arranged that the revolving dial may be pierced through by the points while held up to their action by the bridge (in lieu of the paper strip backed by a drum against which the points acted) and the second claim I understand to refer to that part of complainant's invention which, in my opinion, consists in so placing the puncturing points that the hole produced in the paper shall leave a barb on the outer face (which could not occur where the paper was backed by a drum and acted upon by the points at its exterior or exposed surface.)

Upon a careful comparison of the invention and machine described and shown in complainant's patent, with what is shown and described in the several Exhibits, Nos. 1, 3, 5 and 6, I find that the latter

77 anticipate wholly what is shown and described as the invention in the specification of complainant's patent, and referred to (as I understand them) in the claims thereof.

In Exhibits Nos. 1, 3, 5 and 6, I find the false paper dial, which forms an essential, if not the most important feature of that part of complainant's invention, referred to in the first claim of his patent, and in Exhibit No. 1 (of 1847) I find also the stationary index and bridge arranged over the protruding portion of the paper dial, and the perforating device arranged beneath; the whole so constructed and operating, that the protruding portion of the paper dial is punctured from the inside out; the stationary slotted index serving to hold the paper while being punctured, all exactly as in the complainant's patent, so that, in this one exhibit (No. 1) is found not only the invention referred to in the first claim, but

also the perforating of the paper dial from the inside out, made the subject of the second claim of said patent.

In Exhibit No. 6, though the paper dial is mounted on the watch dial, and a stationary index is combined therewith, there are no perforating points employed, the marks or indications on the paper being produced directly by the key, so that in this particular of the perforating points there is the difference alluded to between complainant's machine and that shown in Exhibit No. 6. In my opinion, in view of what is shown in the state of the arts in Exhibits Nos. 1, 3, 5, and 6, and in the Buerk patent of 1861, there could be no invention in the machine produced in the patent of complainant in 1865, because in all the exhibits named the false dial had been used, both as complainant uses it, and otherwise, and in combination with a variety of devices for perforating, embossing and printing upon it, both by the direct action of the keys, and by the action of intermediate devices moved by the keys, while in Exhibit No. 1 is shown the combination referred to in complainant's first claim, as well as the special feature referred to in the second claim, and in the Buerk patent of 1861 is shown precisely such a gang of points as is used in complainant's patent.

Adjourned to July 24, 1873, at 11 a. m.

78 NEW YORK, *July* 24, 1873.

Present, counsel as before.

The answer of witness to question 8 resumed:

A. In Exhibit No. 1, the patentee proposed to employ a single point carrying lever or device, in lieu of the gang used in complainant's machine (and which had, before complainant's invention, been used in the machines where the paper was placed on a drum instead of on the dial-plate), and move this one point-carrying lever toward and from the centre of the dial, to bring the point under the different concentric annular dial spaces, (which indicate the different stations,) and also upward and downward to perform the perforating operation, and he also proposed to have a series of keyholes in the case or box, in order that the wards of the keys might be made different, while in complainant's machine only one keyhole is made in the case, and all the keys are adapted to enter this one hole, and the previously known gang of points is used in lieu of the single perforating device, with a compound motion used in the old French patent, Exhibit No. 1. But the mere dispensation of all the keyholes but one, so that all the keys would have the wards shaped alike, was such a change as would be suggested by ordinary mechanical judgment, and involved no invention—indeed, it was a mere matter of discretion to adopt the one keyhole, and have the machine more comely in appearance and less guarded against fraud, or the series of keyholes, which, while it made it more difficult for the watchman to perpetrate a fraud, rendered the case of the machine necessarily a little more cumbersome.

Q. 9. Have you a model or instrument made with a single keyhole, as complainant's machine, but in other respects like that shown in Exhibit No. 1? if yea, you will please produce such machine, that it may be made an exhibit, and compare it with the machine shown in Exhibit No. 1.

79 A. The machine which I now produce (and which machine is marked Defendants' Exhibit No. 7), is one which appears to have been made by the same party who manufactured Exhibit No. 4. I have examined it, and find that while it has but one keyhole for all the keys at the several stations, just as the complainant's machine, it is in all

other respects substantially like the invention set forth in Exhibit No. 1. It appears to have been made from the description or instructions contained in said exhibit; at any rate any one skilled in the art could readily make such a machine from Exhibit No. 1, without the exercise of any inventive ingenuity.

Q. 10. Do the defendants sell any other watchman's time directors than such as represented by Complainant's Exhibit B; and if yea, will you produce any such, that they may be made exhibits in this case?

A. The defendants sell another kind of watchman's time detector, one of which I now produce, (which model produced by witness is marked Defendants' Exhibit No. 8.)

Q. 11. Please state whether you find in the watchman's time detectors, marked Complainant's Exhibit B, and Defendants' Exhibit No. 8, or in either of them, the invention described in the plaintiff's patent (Complainant's Exhibit A), and referred to in the claims thereof, having in view the state of the art, which has been put in evidence by the defendants.

A. Upon a careful comparison of Complainant's Exhibit B with what is shown and described in plaintiff's patent (Complainant's Exhibit A), and referred to in the claims thereof, I find that Exhibit B does not embrace any part of the invention shown or described and referred to in the claims of said patent.

This Exhibit B does not embrace the invention referred to in the first claim of plaintiff's patent, because there are not to be found in it any spring points *d*, or any equivalent of this element of the combination referred to in said claim. There are the false dial and the stationary index, but there are no points for perforating the dial; in lieu of the latter is employed an entirely different device, producing a
80 different effect on the paper dial. It is a row of type permanently arranged immediately beneath the false or paper dial, any one of which is made to emboss or print upon the under surface of the dial by a pressure exerted on the upper surface of the paper by the ward of the key inserted and turned by the watchman. The under side of the index is made cam-like, and is utilized to force downward on to the paper the key (when the latter is turned), which key is so made as to press upon the paper at a certain point over a particular one of the type; there is no similarity whatever between this device, and the mode of operation thereof, and that shown and described in plaintiff's patent. In one case the paper dial is perforated, in the other it is printed upon; in one case the operation (perforation) performed by the spring points on the paper dial is such as to indicate on the upper or exposed surface of the paper the time and place at which such operation was performed; in the other this information can be derived only from the exposure of the under surface of the paper dial on which alone the operation of printing is distinctly discernible. Without taking into consideration the prior state of the art, I cannot discover any substantial similarity between the machine shown in Exhibit B and the invention shown and described and referred to in the claims of the plaintiff's patent, while by a comparison of Exhibit B with the old French and English patents (Exhibits 1, 3, 5, 6) I find that, long prior to plaintiff's invention, the false paper dial had been used as in Exhibit B, and the printing of letters and devices effected thereon (by the insertion at each station of the key), by means substantially similar to what is used in Exhibit B. In most of these cases the type were on the keys, sometimes dipped in ink to print on the paper dial, sometimes simply forced against the dial or a backing, and the letter printed by "transfer paper," sometimes pressed on the

paper dial by the action of a spring (as in the Nolet French patent, 1847), and when I consider the prior state of the art in connection with what is shown and described in plaintiff's patent, I am forced to
81 the conclusion that its claims do not refer to any new invention, because as far back as in the French patent of Sinque, of 1847, the false paper dial was perforated from the inside out just exactly as referred to in plaintiff's second claim, and at the same time the perforating device was used in combination with "a false revolving dial" and "stationary index," precisely like those seen in plaintiff's patent.

Upon a careful comparison of Defendants' Exhibit No. 8 with what is shown and described in plaintiff's patent, I find the former to embrace that part of the invention which is referred to in the second claim of plaintiff's patent, viz, "producing the perforations on the paper dial or its equivalent from the inside out, instead of the outside in, as before." But this I find (as I have already testified), was done as far back as 1847, in the old French machine (Exhibit No. 1), so that although this part of the invention referred to in plaintiff's patent is embraced in defendant's machine (Exhibit No. 8), the latter embraces in this respect only the precise invention shown and described in the said French patent (Exhibit No. 1) of 1847.

I also find that Defendant's Exhibit No. 8 differs from the invention referred to in the first claim of plaintiff's patent in this respect: that in lieu of a gang of spring points, each one adapted to perforate the paper dial only in a given line or circle as the latter revolves, the defendants' machine has a single perforating device adapted to be moved to any one of the several circles or annular divisions of the dial to perform the perforating operation. This difference is, however, the only one which exists between the plaintiff's invention and the machine shown and described in Exhibit No. 1 (patent of 1847), so that if it be a material one, defendants' machine cannot be said to be substantially like plaintiff's invention, while if it be an immaterial difference, then there can be no substantial difference between plaintiff's machine and what was known and patented long prior to his invention.

In my opinion, the change in plaintiff's machine merely from
82 the single perforator to the "gang" does not constitute invention, in view of the fact that precisely the same "gang" of spring points, constructed and operated upon by the keys in the same manner, to perform the same function, had before been used in the Buerk machine, patented 1861. The only particular in which the invention referred to in plaintiff's first claim differs from that shown in the old French patent, 1847 (Exhibit No. 1), is in the presence in the combination of the "gang" of spring points, as a substitute for the single spring point adapted to move toward and from the centre of the dial, and this difference seems to be no more than the mere substitution for the single perforator used in the French patent of the gang of perforators used in the Buerk machine of 1861, or the mere substitution of one well-known mechanical device for another.

The particular kind of perforating device used in the Buerk machine, patent of 1861, performs precisely the same office when put into the French machine of 1847, and the same may be truly said as to the transposition of the single perforator of the French machine to the Buerk patent of 1861. That is to say, any skilled mechanic, with the French patent of 1847 and the Buerk patent of 1861 before him, could, without the exercise of any inventive ingenuity, transpose the perforating devices to make a combination such as referred to in the first claim of the plaintiff's patent, the only change in the result of the new combination being

due to the peculiarity of the perforating device. If he wanted to perforate the paper in the manner shown in the French patent, he would employ the single perforator; if he wanted to puncture it in the manner adopted in the Buerk machine of 1861, he would employ, in combination with the dial and index, the "gang" of perforating points, and in the application of either he would have to make no material change in either the selected perforating device or the other elements, in order to complete the combination determined upon.

83 Q. 12. Have you a machine or instrument made according to the plaintiff's patent, Complainant's Exhibit A? If yea, will you produce it, that it may be made an exhibit in this case.

A. The watchman's time detector, which I now produce, is one made substantially according to the plaintiff's patent, and is stamped on the dial, "J. E. Buerk, Boston, Mass., patented January 1, 1861, and June 6, 1865." (Which model is put in evidence, and marked Defendants' Exhibit No. 9.) The patent does not instruct those skilled in the art that the index, which serves to support the paper dial on top against the upward thrust of the perforating points, should be slotted or hollowed out to permit the passage of the points through the paper while the latter is held down each side of the needle point, and is, in this respect, very insufficient and defective; but the machine is made with the proper slot in the index underneath (out of sight). It would not work successfully to perforate the paper and leave the barb on the top surface, as described in the patent, without this discovered feature of construction.

Q. 13. Have you an instrument or machine constructed according to the Buerk patent of 1861, to which you have alluded; if yea, will you produce the same, that it may be made an Exhibit in this case?

A. The watchman's time-detector, which I now produce, embraces the invention described in the Buerk patent of 1861, and is stamped or lettered on the dial plate as follows: "J. E. Buerk, patented January 1, 1861. E. Howard & Co., Boston." (Which machine is produced in evidence, and marked Defendants' Exhibit No. 10.)

84 United States circuit court, southern district of New York.

JACOB E. BUERK
vs.
WILLIAM IMHAEUSER ET ALS.

New York, *December* 18, 1873—11 a. m.

Met pursuant to notice.

Present, Mr. Van Santvoord, of counsel with complainant, and Mr. Keller, of counsel with defendants.

And the witness, Jacob N. McIntire, being cross-examined by Mr Van Santvoord, says:

14th. X Q. How many spring points do you find in Exhibits 1, 2, 4, and 7 respectively? I refer to the drawing of Exhibit 1 and to the translation of the text, Exhibit 2.

A. In the drawing Exhibit 1 I find that one spring point for perforating the paper dial in the translation (of the specification) marked Exhibit 2, one and the same perforating point is alluded to, and in the models Exhibits 4 and 7 I find shown respectively one perforating point or needle.

15th. X Q. Would it then be possible in the machines described and shown in the exhibits mentioned in your last answer, to produce more than one perforation by a single operation of the key?

A. Of course not.

16th. X Q. Do you find the model Exhibit No. 7 described in Schwilgue's patent, Exhibit 2, and the drawing of Exhibit 1?

85 A. The translation and drawings of said patent do not describe and show precisely the mechanism exhibited in said model No. 7, but do describe and show a machine like model Exhibit 4. The model No. 7, however, embraces substantially the same invention as that set forth in said patent, and is, as I have stated in my examination-in-chief, a modification of the said invention, and adapted to the employment of one, instead of a series of keys.

17th. X Q. Please examine the detector Exhibit B, and state if its construction admits of the production of either one or more than one mark or indentation upon the false dial, by means of a single key, that is to say, marks or indentations from either one or more than one of the stationary dies employed therein by means of a single operation of a single key.

A. I have examined the detector marked Exhibit B, which is made in accordance with letters patent to Anton Mayer, No. 117442, and to the construction and operation of which I have previously alluded in my examination-in-chief. In this detector one or more stationary dies. project from the face plate, and have engraved or otherwise produced on their projecting portions figures, letters, or other suitable characters, and immediately over said dies is arranged or located a bridge or abutment, against which the key inserted and turned beneath it takes a bearing.

It is designed in this machine to have the keys so constructed (where the number of stations in the beat exceeds the number of the marking dies in the clock), with two or more projections, that by the insertion and turning of a single key an impression from two or more of the engraved dies may be simultaneously made upon the under surface of the paper dial.

18th. X Q. Since the series of dies in the defendant's detector, Exhibit B, are stationary, explain how the key, which forces the paper dial against them, is enabled to be turned between the faces of said dies and the bridge or abutment which is arranged or located over them, and at the same time force the paper against them, so as to produce the desired impression.

86 A. The bit of the key is supposed to be a little greater in width than the distance between the lowest point of bearing which it takes on the under side of the bridge to which I have referred, and the top surface of that part of the paper dial which is supposed to lay on top of and in contact with the engraved surfaces of the stationary dies. When the key is inserted and pressed home, the lower edge of its bit naturally depresses that portion of the paper dial which is not immediately over the stationary projecting dies, and as the key is subsequently turned round, the said lower edge of its bit rides or travels along on the top surface of the paper dial, and during its passage over that part of the paper which lays in contact with the stationary dies, the said bit is slightly forced and held downward by the confining bridge or abutment, against which its upper edge bears, and thus the paper is so compressed, at that point which is immediately over the dies, as to induce to the proper impression by the latter.

To facilitate this requisite compression of the paper, or this necessary

pressing of the paper down onto the dies, the under surface of the confining bridge or abutment is made slightly inclined from a plane parallel with the surface of the paper dial, so that, as the bit of the key passes between said inclined surface and the paper, its bit will be pressed upon the paper, with a sort of wedging action—and as an auxiliary to this pressing operation of the bit of the key on the paper, the said bridge is adapted to slightly yield or spring, thus inducing to greater perfection in the printing or embossing of the under surface of the paper, and tending to avoid any rupture of the paper during the said printing or embossing operation.

J. N. McINTIRE.

Sworn and subscribed to this 18th day of Dec., 1873.
E. G. THOMPSON, *Examiner.*

87 Counsel for defendants offers in evidence letters patent granted to Theodore Hahn, assignee of A. Mayer, for improvement in "watchmen's time detectors," dated December 28th, 1869, numbered 98289, and which is marked Defendants' Exhibit No. 11, E. G. T., ex'r.

Also letters patent granted to Anton Mayer, for "improvements in watchmen's time checks," dated July 25th, 1871, numbered 117442, and which is marked Defendants' Exhibit No. 12, E. G. T., ex'r.

Also letters patent granted to Thodore Hahn for "improvement in watchman's time checks," dated April 22, 1873, numbered 138084, and which is marked Defendants' Exhibit 13, E. G. T., ex'r.

Defendants close.

88 Circuit court of the United States, southern district of New York.
In equity.

JACOB E. BUERK
vs.
WILLIAM IMHAEUSER AND THEODORE HAHN, impleaded with Charles Keinath.

Present, J. Van Santvoord, for complainant, and C. M. Keller, for defendant.

Testimony taken on behalf of the complainant in rebuttal, January 9th, 1874.

A. FABER DU FAUR, a witness produced and sworn on the part and behalf of the complainant, in answer to interrogatories by counsel for complainant, deposes and says as follows:

Q. 1. Have you been examined as a witness for complainant in this case?

A. I have.

Q. 2. Have you examined the French text of Nolet's patent of July 8th, 1847, and have you compared the same with the translation thereof in English, Defendants' Exhibit No. 3, with respect to the accuracy of such translation, and state how you find such translation?

A. I have examined a copy of the French text, which I find among defendants' papers, and have compared the same with the translation Defendants' Exhibit 3, and I find the said translation correct, with the exception of the expression "perforation or puncheon," on the fourth page; although the French word "poinçon" might be translated as

stated, it cannot be so translated in the connection in which it is found in the French text, where it means "a stamp, or die." I quote from the translation: "By impressing at certain intervals a figure, or other mark, on the dial B," where impressing certainly does not mean perforating. I also quote from the translation: "Figure 2, the square figure W is a piece of leather inlaid on the plate J J, to facilitate the impression which I shall explain presently."

89 Q. 3. Please compare Defendants' Exhibit No. 3, Nolet's Belgian Patent, with Defendants' Exhibit No. 5, Rowbotham's English patent, and state whether or not they describe the same invention or construction.

A. The inventions and constructions described and shown in the two patents referred to, Exhibits 3 and 5, are identical, with the exception that Rowbotham has added an ink reservoir, and makes the marks with ink, while Nolet makes impressions without ink.

Q. 4. Have you examined and do you understand the construction and mechanism shown and described in Defendants' Exhibits No. 1 and No. 2, the French (and English translation of the French) text of Schwilgue's French patent? And if yea, state whether or not the model Defendants' Exhibit No. 4 contains substantially said construction and mechanism, and also state whether or not you find in said Exhibits Nos. 1, 2, and 4, or in either of them, the invention described in complainant's patent, Exhibit A.

A. I have examined, and believe I understand the construction and mechanism shown and described in said Exhibits Nos. 1 and 2, and I consider Exhibit No. 4 as containing the mechanism described in Exhibits Nos. 1 and 2. I do not find in Exhibits Nos. 1, 2, and 4, or in either of them, the combination of elements specified in the first claim of complainant's patent, because although I find a revolving dial and a stationary index, I do not find spring points constructed and operating substantially as and for the purpose set forth in complainant's patent.

The mechanism described in complainant's patent has a gang of marking devices operated through one single key-hole, and admitting single marks, or combinations of marks, being made by the insertion and turning of different keys through this one single key-hole, while the mechanism shown in Exhibits Nos. 1, 2, and 4, has but one single marking-point, with a motion in the direction of the radius, and with a number of key-holes. By the insertion of a key but one mark can be made, the distance of the mark from the centre being different for the different key-holes or keys used. Combinations of marks cannot be made by the insertion of one key.

I do find in Exhibits 1, 2, and 4, the producing perforations on the paper dial from the inside out, as specified in complainant's patent, but with the case open; such perforations could be made from the lower side without taking off the paper dial, because the projecting paper dial is not supported by a disk as in complainant's mechanism.

Adjourned to Saturday, January 10, 1874, 2 o'clock p. m.

90 JANUARY 10, 1874—2 o'clock p. m.

The continuation of the examination of Mr. Faber du Faur.

Present, counsel as before.

Q. 5. Please examine the model Defendants' Exhibit No. 7, and state whether or not you find therein the invention or construction shown and described in the Schwilgue patent, Defendants' Exhibit 1 and 2, and if you find any essential difference in said model Exhibit No. 7, as compared with the Schwilgue patent, please point out such difference.

A. I have examined Defendants' Exhibit No. 7, and I do not find therein the invention or construction described in Defendants' Exhibits 1 and 2. The marking device in Exhibit 7 is arranged differently from the marking device in Exhibits 1 and 2; it is operated by different keys inserted through one single key-hole, while in Exhibits 1 and 2 different key-holes are used for the different keys. No such arrangement of a spring point moving in the arc of a circle and operated by different keys inserted through one key-hole as in Exhibit 7 is shown or described in Exhibits 1 and 2. I consider this to be an essential difference.

Q. 6. Please examine the Defendants' Exhibit 3, the Nolet patent, and Exhibit 5, the Rowbotham patent, and state whether or not you find therein the invention described and claimed in complainant's patent, Exhibit A.

A. I have examined the patents referred to. I do not find therein the invention described in complainant's patent, Exhibit A, because they do not describe a gang of marking devices such as shown and described in complainant's patent; also, I do not find perforations on the paper dial from the inside out. No perforations are made by the marking dies of Exhibits 3 and 5.

Q. 7. Please examine Defendant's Exhibit No. 6, and state whether or not the same contains the invention described and claimed in complainant's patent, Exhibit A.

A. I have examined Defendants' Exhibit 6, Buckney's patent, and I do not find therein the invention described in complainant's patent, the invention described in Exhibit 6 being merely a modification or improvement on the inventions described in Exhibits 3 and 5, the marks being made by means of transfer paper placed beneath the paper disk. There is no gang of marking divices in the watch case as in complainant's invention, and no perforations made on the paper dial.

Q. 8. Do any of the Defendants' Exhibits 1, 2, 4 (Schwilgue's patent and model), or 3, 5, or 6, contain or describe a detector or apparatus like Defentants' Exhibit 7?

A. They do not.

A. FABER DU FAUR.

Subscribed and sworn to before me January 10, 1874.

R. E. STILLWELL,
Examiner, &c.

91 FRIDAY, *February 27th*, 1874.

The court meets pursuant to adjournment and is opened by proclamation.

Present, Judge Woodruff.

JACOB E. BUERK
vs.
WILLIAM IMHAUSER. } In equity.

This cause coming on for final hearing upon pleadings & proofs, Mr. John Van Santvoord is heard in behalf of complainants.

MONDAY, *March 2d*, 1874.

The court meets pursuant to adjournment and is opened by proclamation.

Present, Judge Woodruff.

JACOB E. BUERK
vs.
WILLIAM IMHAUSER. } In equity.

Mr. Charles M. Keller is heard in behalf of defendants.
Mr. John Van Santvoord is heard in reply.
Curia advisari vult.

92 Circuit court of the United States for the southern district of New York.

J. Van Santvoord, for compl'ts.
JACOB E. BUERK
vs.
WILLIAM IMHAEUSER ET AL.
Keller and Blake, for def'ts.

WOODRUFF, *Circuit J.:*

I have re-examined the decision heretofore made by me in Buerk v. Valentine (9 Blatch., 479) so far as it bears upon the contest in this suit. In that case the patents and the patented devices, including the patent for the infringement of which this suit is brought, are fully described. The additional evidence here introduced does not alter my conviction that the invention now in question and secured to the complainant by his patent of June 6th, 1865, was not anticipated by any of the devices to which the evidence relates, nor by John Burk, upon whose invention that of the complainant was an improvement.

It is true that a revolving dial had before been used, that John
93 Burk used perforating points, that Rowbotham & Nolet used a stamp rather than a key, that Schwilgue employed a single point adjustable to different positions of the varying positions of the bits on the keys. As to all these, specific and important differences from the complainant's detector might be pointed out. For example, apart from the plain difference between Schwilgue's and the complainant's in the manner of construction, the mode in which the single point was controlled and shifted by a species of lever or rotating arm, the fact that the dial was not placed on the arbor of the watch movement, and other particulars, which made it a far more cumbrous and inconvenient instrument than the complainant's detector; besides all this, it had no such capacity of variation by the combinations of marks or punctures produced by the keys which can be employed in the complainant's machine, and enable the owner to make it serve for a very great number of stations if his business so requires.

And as to the fact that marks and punctures had been before
94 used, the defendants, or especially their experts, treat the case to some extent as if a device was not patentable if by prior known means the same, or substantially the same, result had been produced. For this, however, the learned counsel for the defendants with his great experience and familiarity with the subject, would not, I am certain, seriously contend.

The invention of the complainant first brought the combination of the revolving dial on the watch arbor, the complex and greatly varying system of markers, into immediate connection in such form of convenience and by such mechanical devices as are shown in his detector.

It is claimed that the parts were old, and that his achievement was aggregation merely. Not so. The very combination itself required new devices to make the combination operative; and the several parts when combined, produce a result not before produced by any one.

Is the defendants' detector an infringement? I think it is.
95 The only difference between it and the complainant's detector is that instead of forcing points upward to perforate, the defendants force the paper downward upon and to receive an impression from stationary projectors from the surface below. Both indent the dial upwards; one makes a perforation, the other an upward indentation. I do not think an inventor can be robbed of the fruits of his invention by such a variation, when the whole structure of his machine is in other respects the same.

Without deeming it necessary to discuss the subject more minutely or fully, my conclusion is that the complainant's patent is valid, and that the defendants infringe it.

Let a decree be entered for the complainant awarding an injunction, directing an account, &c.

(Endorsed:) Filed June 10, 1874.

96 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court rooms, in the city of New York, on the 27th day of June, in the year of our Lord one thousand eight hundred and seventy-four.

Present, the honorable Lewis B. Woodruff, circuit judge.

JACOB E. BUERK
ag't
WILLIAM IMHAEUSER, THEODORE HAHN, AND
Charles Keinath.

This cause came on to be heard at this term, and was argued by counsel for complainant, and for the defendants William Imhaeuser and Theodore Hahn, and the bill of complaint having been taken as confessed at a preceding term against the other defendant, Charles Keinath, for want of an answer, thereupon, upon consideration thereof, it was ordered, adjudged, and decreed as follows, viz:

That the letters patent granted and issued to the complainant, Jacob E. Buerk, for an improvement in watchman's time detectors, on the 6th day of June, 1865, numbered 48048, are good and valid; that the
97 said Jacob E. Buerk was the first and original inventor of the invention therein described.

That the defendants, William Imhaeuser, Theodore Hahn, and Charles Keinath, have infringed said letters patent No 48048 by making, or causing to be made, using, and selling watchman's time detectors containing and using the invention described in and secured by the said letters patent.

That said complainant is entitled to a perpetual injunction restraining the defendants from making, manufacturing, or causing to be manufactured, using, or vending to others to be used, watchman's time detectors embracing, containing, or using the invention described in and secured by the said letters patent No. 48048, and that such injunction issue accordingly.

That the said complainant is also entitled to an account of all such gains and profits as have accrued or arisen to, or have been earned or

received by, the said defendants, or either of them, by reason of such infringement, and is also entitled to recover from the defendants all damages the said complainant has sustained thereby, and that it be referred to Kenneth G. White, esq., one of the masters of this court, residing in the city of New York, to take and state and report to the court an account of the number of such watchman's time detectors made or caused to be made, and also the numbe' sold by the said defendants, or either of them, since the said 6th day of June, 1865,
98 and also the number now on hand; and also the gains and profits which the said defendants, or either of them, have received by and from the manufacture, use, and sale of the said patented improvement; and that he also ascertain, assess, and report what, if any, damages the said complainant has suffered or sustained by reason of the said infringement over and above or beyond such gains and profits; and that he ascertain, assess, and report on said matters with all convenient speed. And that the complainant on such accounting have the right to cause an examination of the said defendants, or either of them, on terms or otherwise, and also the production of the books and accounts of the said defendants, or either of them, and that the said defendants attend for such purpose before said master from time to time, as said master shall direct; and that the said complainant do recover of the defendants his costs and disbursements in this suit to be taxed.

L. B. WOODRUFF,
Circuit Judge.

(Endorsed:) Circuit court U. S., southern district of N. Y. Jacob E. Buerk ag't Wm. Imhaeuser, Theodore Hahn, and Ch's Keinath. Decretal order. J. Van Santvoord, compl't's sol'r. Filed June 27, 1874.

99 Circuit court of the United States, southern district of New York.

JACOB E. BUERK
vs.
WILLIAM IMHAEUSER, THEODORE HAHN & Charles Keniath.

In conformity with the ordered entered in the above entitled cause, you will please to take notice that the reference ordered therein will be proceeded with before me, a master duly appointed by the circuit court of the United States for the southern district of New York, at my office at the United States courts, at 41 Chambers street, city of New York, on the 22d day of July, 1874, at ten o'clock in the forenoon of that day, at which time and place you are hereby notified and required to attend, to be examined in relation to the matters of such reference.

And you are further commanded and required to bring with you all books, papers, writings, vouchers, and other documents showing or tending to show the number of watchman's time detectors made
100 by or for you, and the number imported by or for you, constructed substantially in the manner described and claimed in complainant's letters patent No. 48048, and also the number thereof sold by you since June 6, 1865, and also the cost of such detectors, and the prices at which the same were sold by you, and the amount of your gains and profits from such sales, and also the number of such detectors now on hand in your possession or power.

KENNETH G. WHITE,
Master, &c.
J. VAN SANTVOORD,
Solicitor for Complainants.

To WILLIAM IMHAEUSER, THEODORE HAHN, & CHARLES KEINATH:

SOUTHERN DISTRICT OF NEW YORK,
City & County of New York, ss:

Charles Wahlers, being duly sworn, says that he served the foregoing notice, and notice endorsed hereon, on William Imhaeuser & Chas. Keinath, defendants in this cause, at their respective places of business, on the sixteenth day of July, 1874, by delivering a true copy thereof to said defendant' personally, and leaving the same with them, to wit, on Wm. Imhaeuser at No. 312 Broadway, and on Chas. Keinath at No. 45 New st., in New York City.

CHARLES WAHLERS.

101 Sworn to and subscribed before me this twentieth day of July, 1874.

[L. S].

W. HAUFF, (146)
Notary Public.

(Endorsement:) U. S. circuit court, southern district of New York. Jacob E. Buerk vs. William Imhaeuser, Theodore Hahn, & Chs. Keinath.

To WM. IMHAEUSER, THEODORE HAHN, & CHARLES KEINATH:

In case of your failure to comply with the requirements of the within notice, I shall apply to this court, at the court room thereof, in the city of New York, on the 23 day of July, 1874, at 11 o'clock in the forenoon, for an order that an attachment issue against you for your disobedience of the same and of the final decree in this cause.

Yours, etc.,

J. VAN SANTVOORD,
Complainant's Solicitor.

102 In the circuit court of the United States, southern district of New York. In equity.

JACOB E. BUERK
vs.
WILLIAM IMHAEUSER, THEODORE HAHN, AND Charles Keinath.

I, Kenneth G. White, the master to whom it was referred by a decretal order of the court to take, state, and report an account of the number of "watchman's time detectors," such as are stated in the decree, made or caused to be made, and also the number sold by the defendants, or either of them, since the sixth day of June, 1865, and also the number now on hand, and also the gains and profits which the said defendants, or either of them, have received by and from the manufacture, use, and sale of the said patented improvement, and also to ascertain, assess, and report what, if any, damages the said complainant has suffered or sustained over and above or beyond such gains and profits of said infringement, do report as follows, viz:

1. That the reference before me and the findings in this report are limited to what are known in this case as the "Hahn Myer's" watchman's time detectors.

2. I find and report that the number of such "Time detectors" sold by the three defendants, Imhaeuser, Hahn, and Keinath, up to June, 1872 (the time when the defendant, Keinath, left the firm), was sixty-one, and that the profits realized thereon was the sum of $1,748.24. (Testimony and Exhibit of Toenig, bookkeeper.)

3. I find and report that the number of such "time detectors" sold by the defendants, Imhaeuser and Hahn, since June, 1872, is 376.

4. I find and report that the average cost of said 376 "time detectors" to the defendants was $24 each. (See statement of defendant's bookkeeper Ex. O, and also his testimony.)

103 5. I find and report that the profit made by the defendants, Imhaeuser and Hahn, since June, 1872, is as follows, viz:

Cost of 376 time detectors, at $24 each	$9,024 00
Cash for two-thirds of office rent, advertisements, etc., as per defendant's account, Exhibit B	924 40
Cash paid William Schmidt, as per defendant's account, Exhibit B	1,128 00
Cash for cart and Frederic for two-thirds of repairs (Ex. B)	400 00
" " traveling expenses (Ex. B.)	3,327 75
" " two-thirds petty expenses (Ex. B)	490 46
" " collector's charges (Ex. B)	66 03
" " losses, etc. (Ex. B)	305 50
" " for business expenses, etc., of Theodore Hahn in Germany (Ex. B)	1,700 00
Total	$17,465 64
376 time detectors sold at an average price of $56.42 each (Ex. B)	21,213 92
Amount received by Imhaeuser and Hahn	21,213 92
Cost	17,465 64
Amount profits Imhaeuser and Hahn:	$3,748 28

6. I find and report that the damages which the complainant has suffered are as follows, viz:

On the 61 time detectors sold by Imhaeuser, Hahn, and Keinath, for each one sold, $53.25.

On the 376 time detectors sold by Imhaeuser and Hahn, for each one sold, $53.25.

Recapitulation or summary.

Damages to complainant from Imhaeuser, Hahn, and Keinath	$3,248 25
Profits made by defendants	1,748 24
Total	$4,996 49
Deduct profits	1,748 24
Amount due from I. H. and K	$3,248 25
Damages to complainant from Imhaeuser and Hahn	20,022 00
Profits of said defendants	3,748 28
Total	$23,770 28
Deduct profits	3,748 28
Amount due from Imhaeuser and Hahn	$20,022 00

104 Upon the foregoing facts and figures, as found by me, I find and report that there is due to the complainant from the three defendants, Imhaeuser, Hahn, and Keinath, the sum of $3,248.25, and from the defendants, Imhaeuser and Hahn, the sum of $20,022.00.

7. I further (find) and report that on December 16th, 1874, defendants, Imhaeuser and Hahn, had 48 Hahn-Myer watchman's time detectors on hand, as appears by Statement Exhibit Q, furnished by defendant Imhaeuser and by his testimony.

All which is respectfully submitted.

Dated February 19th, 1875.

KENNETH G. WHITE,
Master, etc.

Circuit court of the United States, southern district of New York. In equity.

JACOB E. BUERK
vs.
WILLIAM IMHAEUSER, THEODORE HAHN, AND Charles Keinath.

Accounting before Kenneth G. White, master, pursuant to decree of this court dated June , 1874.

FRIDAY, *December 4th*, 1874.

Present, Francis Forbes, esq. counsel for complainant, A. V. Briesen, counsel for defendants Imhaeuser and Hahn. No one appearing for defendant Keinath.

Defendants Imhaeuser and Hahn, submit statement dated December 3d, 1874, and the same is marked Defendant's Ex. B, K. G. W., master, etc.

105 Defendant's counsel also give notice that the defendant William Imhaeuser, the bookkeeper, William Schmidt, of Imhaeuser & Co., and the books of said firm, are here in court, subject to the examination by the complainant.

Counsel for complainant objects to the filing of the foregoing statement, unless the first statement heretofore filed and sworn to October 8th, 1874, and marked Ex. A, be placed in evidence in this cause.

Counsel for defendants states that he does not offer the statement which was signed and sworn to on the 8th of October last in evidence, because the same does not, on its face, indicate of what it is a statement; also, because the same has not been completed, as appears by reference to the last two items immediately preceding the signature of Imhaeuser; and, furthermore, because the same is not a correct statement, as counsel is informed.

Counsel for complainant objects to all the items in the statement marked Ex. A, excepting the first item, "455 Hahn-Meyer's time detectors, including duty, etc.," and the statement of profits on the second page, commencing "W. Imhaeuser."

Also to the following items in the second statement, marked Ex. B.: The number of watchman's detectors, because not agreeing with first statement, Ex. A. The item commencing "To cash for 433 Hahn-Meyer's time detectors, etc.," as not agreeing with the first statement, Ex. A.

And also as containing improper charges.

Also, to items commencing "Paid Charles Keinath for commissions,

etc.," down to "Cash paid for William Imhaeuser, interest, etc.," as incompetent and improper items to be allowed in this accounting.

Also, to item commencing "Cash paid for William Imhaeuser, interest, etc.," as being an improper item to be allowed to the defendants on this accounting,

Also, to item included under heading "Expenses of Theodore Hahn," and especially to the item commencing "To cash for Theodore Hahn's interest on investment," etc., as an incompetent allowance to defendants on this accounting.

106 WILLIAM IMHAEUSER, called and duly sworn for complainant, deposes and says:

I am one of the defendant's in this cause. Anton Meyer, in Stuttgart, Germany, manufactured the watchman's time detectors sold by me previous to June, 1874. I mean he manufactured these Hahn-Meyer's watchman's time detectors from 1871 to June, 1874, when the decree was entered. Nobody else manufactured for me Hahn-Meyer's time detectors. I sold Hahn's watchman's time detectors. I sold also Theodore Hahn's watchman's time detectors. I also sold three or four or five old ones that I had taken in exchange for new ones. I produce the original invoices received from Theodore Hahn. He sent me the bills. These are such invoices as are entered at the custom-house; they are duplicates from the custom-house. I cannot give the names of the steamers by which we received time detectors previous to June, 1872, because we received only a few, and the books which were kept by Mr. Keinath's bookkeeper do not show the name of the steamer by which they came. We sold fifty-seven previous to June, 1872, as far as the books show. The names of steamers from June, 1872, to the present time are as follows:

Steamer Rhein, June 15, 1872—that is the date of the bill when they were shipped. Next, steamers Frankfort and Hansa, July 11th; steamers Nemesis and Donau, August 7th; October 9th, steamer Main and steamers Weser and Bremen; December 23d, steamers Hansa, Weser, Bremen, Main.

(Counsel for defendants objects to these quotations from one of the books offered by the defendants, as involving an unnecessary loss of time, the book in question speaking for itself.)

The invoice book from which I have taken the names of the steamers as above gives the names of all the steamers by which these importations of watchman's time detectors were made, and also gives the dates of the bills.

(Invoice books marked Exhibit C.)

I have no book here which gives the names of the steamers before June, 1872. I have here, as far as I know, all the books which were used by our firm from June, 1871, to the present time.

I don't know the books so well; I suppose the ledger from 1871 to 1872 is not here; I don't know any other book that is not here.

(Books produced, and marked Exhibit D to L, inclusive.)

107 I received no other invoices but these, so far as I know. I do not get them; Mr. Schmidt gets them. He attends to the whole thing.

(Invoices produced and marked Exhibits Nos. 1 to 8 inclusive. Counsel for defendant states that the ledger from 1871 to 1872, having been inadvertently omitted, will be produced if the complainant so desires.

Complainant's counsel accepts the offer.

The ledger above referred to and also the blotter are produced by defendants, and are marked Exhibits M and N, respectively.)

When we get a bill of watches we put them in Exhibit F; we call it a stock book, I think. This book was commenced in June, 1872. This is a copy of the old book. You can have the old one if you want it. I will produce the old book to-morrow.

The book Exhibit F is a blotter, and is an original book. There are no other books here which are copies except Ex. B. I have no other invoices but the ones I have produced, that I know of. All the invoices are in Mr. Schmidt's handwriting, and are copies of the originals, except Ex. C, which is in Mr. Hahn's handwriting. Mr. Schmidt is our bookkeeper. The original invoices, so far as I know, are in the custom-house. I gave them all to Dingelstedt. He is a custom-house broker; his office is No. 27 William street. These exhibits (invoices) are copies, and if I have any of the originals like Ex. C in the handwriting of Mr. Theodore Hahn in my office I will produce them to-morrow.

Q. Please give the names of all persons to whom you sold watchman's detectors up to the decree in this case, and also give the names of ships by which importations were made of such detectors, and the date of such importation?

A. I will do so by preparing a list from the books, and will produce the same at the next meeting, if possible.

Q. How many of these watchman's detectors have you on hand at the present time—I mean of those similar to complainant's patent?

A. The number of watches shown in the book is about 18. I charged them to Theodore Hahn, and will send them back to him in Europe.

Q. Please give to-morrow the numbers of these time detectors that you have on hand?

A. I will do so.

We sold from 1871 to 1874 Hahn Mayer's watches; from 1873 to 1874 we sold another kind also, Theodore Hahn's, and that is the reason we charge for two-thirds of office rent, advertisements, &c., from June, 1872 to 1874. $924.40. I charge cash for Cart & Frederick for two-thirds of repairs for the same reason. I charge cash for two-thirds of the petty expenses for the same reason.

108 Q. How are any other time detectors in comparison with the number of Hahn Meyer's?

(Objected to as immaterial.)

A. I don't know without reference to the books.

(Witness requested to refer to his book and ascertain the number.)

(Same objection.)

Mr. Schmidt and myself made out this amended statement together. We took it from the books. Mr. Schmidt made the first statement. He showed it to me, and I thought it was right. I didn't examine into it strictly. I trusted to him. We were working on the last statement about four days. I thought it best to go over it with him.

Q. You say in your first statement, "455 Hahn Meyer time detectors, incl. duty, $25, $11,375." State how much you paid for the watches, and how much duty.

A. I made an account from the cash, and the expense bills, duties, &c., and made an average cost. To tell you how much I paid, I must look at the bills and charge book. I don't remember how much I paid for them. I find the prices shown in the invoice book, Ex. C, and they range from 18 to 26 florins 15 kr. The most are 26fl. 15k. A florin is equal to 40 cents gold, American money, and 60 kreutzers in a florin. I find an invoice, Ex. 4, two entries of 17f. 30k. for 12 detectors each.

I will have to see the bill in order to give you the amount freight on each detector. I don't know what it is. The books will show it. The difference in price, from 17 to 26 florins, was because the machines were better made.

Q. Did you include in the $25 stated as the cost of each time detector in your original statement, Ex. A, the leather pouch, package, dial, cost of making and duty, and legalization of invoices?

(Objected to, because the witness has stated that he was not instrumental in drawing Ex. A, and all further examination of the witness with reference to Ex. A is objected to, as such exhibit is not before the master, the counsel for the complainant having refused to accept it at the time it was offered to be filed. Objection overruled. Exception taken.)

A. Mr. Schmidt and myself made this account up together—not this one, but the other one. He made this one himself, and afterwards we corrected it again, and put down the amount which appears in the amended statement.

Q. Then the $25 mentioned as the cost of each instrument in your first statement is not correct.

A. It is not correct. The second one is correct. In the first statement we took an average price.

109 DECEMBER 16TH, 1874.

Present, counsel for the respective parties.

The defendant produces the papers called for by counsel for complainant, and they are marked respectively Exhibits O, P, Q, R, S.

I have not searched from the original invoices in my place. We have none there. The papers I produce this morning were made out by my bookkeeper and myself. We made out Exhibit O. The $4 commission was paid to the patentee on the other side, and was not entered on the invoice. The $4 is not paid unless we sell the watch here.

Adjourned to the 17th inst., at 12 m.

DECEMBER 17TH, 1874.

Present, counsel for respective parties.

The further examination of the witness Imhaeuser suspended for the present.

WILLIAM SCHMIDT, sworn on part of complainant, deposes and says:

All the exhibits, numbered from 1 to 8 inclusive, are in my handwriting, except No. 6, which is in the handwriting of Theodore Hahn. The exhibits in my handwriting are copies of the original invoices in the custom-house, and No. 6 is a copy also, written by Mr. Hahn when he was here 2½ years ago. Those in my handwriting are correct copies. Mr. Hahn made No. 6, because I was not at that time employed in the business. I went into their employ the latter part of July, 1872.

I know nothing about any other invoices previous to these. I made a search, and these are all I could find. If there are any other previous invoices, they are probably in the hands of Mr. Keinath, a former member of the firm. As far as I know, Ex. H is the invoice book kept by Mr. Keinath, and, as far as I know, Ex. C, which is the invoice book kept by me, follows directly after Ex. H. Ex. C comes down to date. We have received no invoices since the last entry in it. We received some of the goods mentioned in the invoices contained herein as late as three months ago. All the invoices in Ex. C are the invoices Ex. 1 to 8, inclusive. Ex. C shows the date of the arrival of the goods contained

in the invoices at our office since August 7, 1872. When the watches are imported, they are entered on the invoice book (Ex. C), and also on
110 the stock book (Ex. F). When they are sold, they are entered in the sales book (Ex. E) and in the stock book, on the right-hand side, opposite to the original entry on the invoice.

The stock book commences on June 15th, 1872, the sales book on the same date, and they are both in my handwriting. The sales book prior to that time is here (Ex. D), but there is no stock book (Ex. D commences July, 1871).

The next book that I kept was the ledger (Ex. I); that commences in June, 1872. The ledger is made from other books—from the invoice book, cash book, journal, or sales book.

As to the invoice book, the ledger refers to it only in the account of Mr. Theodore Hahn.

The ledger is balanced down to July, 1874. The entries in it are made down to September. Previous to June, 1872, the books produced here are—

Ex. M.—Ledger, appearing to commence June 18, '71, and to be balanced June 11, 1872.

Ex. H.—Invoice book, beginning July 1, '71, ending April 30, '72.

Ex. L.—Sales book, beginning July 7, '71, ending July 10, '72.

Ex. 10.—Blotter, beginning July 1, '71, ending June, '72.

Ex. 9.—Petty cash book, beginning July 1, '71, ending June 10, '72.

Those are all the books bearing date previous to June, 1872.

When I commenced I opened a new set of books; I never saw the old books till about two months ago.

When I sold a watch I put it on the sales book. In account Ex. O, the $9.60 gold is the average cost price of the watches without duty. The item of $4.32 was intended to be the average duty on each watch—40 per cent., but I have calculated it at 45 per cent., which was a mistake. The prices for punches and dials appear on invoice book. Packing cases and paper boxes also appear on invoice book. I produce several accounts of charges from Theo. Hahn to explain item of 56 cents in account Exhibit O. In the accounts which I have just produced, those items which stand opposite the name of "Bachmann" are charges for transportation. The charges for legalization were $2.50 for each invoice, and not a certain amount for each watch. The account Exhibit B is in my handwriting. It shows all the watches sold, and the actual prices for which sold, and it shows a true and correct account of the expenses. The expenses are all taken from the expense account in the journal. The $4 paid to Meyer appears in expense account. The average price was paid to him on each and every watch. The price varied, but $4 is the average. I am the William Schmidt named in the account Exhibit B, and I received the $3 there charged for each watch sold.

111 Cross-examined:

I received no other salary. Nothing else was sold by the firm of Imhaeuser & Co. but time detectors. They sold other kinds of time detectors than Hahn-Meyer's. They were in the proportion of two-thirds of Hahn-Meyer's and one-third of Theodore Hahn's. I received commission on each kind, but those on the statement (Ex. B) are only for the kind there charged, Hahn-Meyer. When I made statement Ex. O, I believed it correct; on my examination here to-day I find it is not correct. The charge of 20 cents for legalization on each and every watch is not correct. The freight is correct. The account of Theo.

Hahn in the books will show the loss of $1.75 per watch on drafts. I think that the item of $1.75 as loss per watch on drafts is correct.

Adjourned to 19th inst. at 11 a. m.

DECEMBER 19, 1874.

Present, counsel for respective parties.

CHARLES KEINATH sworn for complainant.

The books Exhibits D, H, G, M, and N, are my books. I went into the firm with Imhaeuser in July, 1871, and left in June, 1872. When I left I gave all the books to Imhaeuser. All of our accounts appear on the books. E. D. Waring kept the books.

Adjourned to 29th inst. at 11 a. m.

DECEMBER 29TH, 1874.

Present, counsel for respective parties.

Adjourned to the 30th inst. at 11 a. m.

DECEMBER 30TH, 1874.

Present, counsel for respective parties.

EMIL TOERING sworn for complainant.

Was book-keeper for the defendants from July 1st, 1871, to June 11th, 1872; kept all the books during that period. I have made a statement from the books, and the statement is correct.

(Statement is marked Exhibit Toering, Dec. 30, '74.)

112 It appears from the statement that 61 watches were sold during that period, and that the net profit realized, as I make it, was $1,748.24. The books show this profit.

Cross-examined:

No rent was paid by the firm during that time. The defendants at that time did no other business except what appears on the books.

The $103 was the entire amount paid by the defendants, as appears from the books. The clock 1741, included in the account as sold June 6, 1872, was not imported in any of those invoices in these books, but was imported before the books closed. At the time sales appear to be made to Theodore Hahn his office was corner Fulton street and Broadway. I have no knowledge of his being here except what appears in the books. I don't know that any of the clocks in my account were sold to go to Europe. I am aware that Hahn was in Europe during part of the time when these books were kept. My books do not show that any patent fee or royalty was paid to Meyer. Do not know whether any was paid. I know of no capital being put in the business except $2,400 by Charles Keinath. I answer from knowledge as well as from the books. I will not swear that Hahn did not put any capital in.

Redirect:

Clock 1741 was sold to Hahn for $50. The interest charged in my account is for allowances made by Keinath.

Adjourned to 2 p. m.

DECEMBER 31, 1874.

Present, counsel for respective parties.

WILLIAM IMHAEUSER recalled for complainant.

Mr. Hahn is now in Germany. All the watches that we imported

appear in the books. The interest on investment, which appears in my account, does not appear in the books. I have sold some Hahn-Meyer watches since June last; have sold six. They were the same kind of watches which are in this suit. They are not included in my account. I sold them to Milwaukee & St. Paul R. R., and they were paid for. I sold one to go to Japan Oct. 6, 1874; was ordered from Japan. Have sold paper dials for watches since June last. They are not included in account. All the watches that were sold appear on the books. The names of all the parties to whom
113 they were sold do not appear on the books, as some watches were sold through travelling agents. The paper produced represents the "Theodore Hahn" watch we sold. (The paper is marked Imhaeuser Ex., Dec. 31, '74.) They were manufactured by August Benk and Pfister.

Cross-examined:

X Q. The watches which were sent to the Milwaukee Railroad were sent about four or five weeks ago. About two weeks ago I wrote to the company to keep them in stock until I could send other ones. I told him that the reason was that there was an injunction. The watches have not yet been sent back, but I expect them every day. Sent the six watches without dials.

(Last answer objected to and overruled.)

The drawing in Imhaeuser Exhibit, December 31, 1874, is an illustration of the same watch which was produced in evidence at the hearing with one spring.

JACOB E. BUERK sworn on part of complainant.

I am the complainant, and have made out a statement of the costs of my watches, and I produce it, and it is offered in evidence, and is marked Buerk Exhibit, December 31, 1874. It includes every item of cost. The total cost was $17.95 each. Sold them for $75 each; net profit, $53.25. My facilities were such that I was able to supply the whole market ever since I went into business in June, 1861. Have examined the list furnished by defendants, and I find the names of some of my agents on the list. Before I got a decree all these agents left me, but have since come back. There were about fifteen of them. The defendants have undersold me, and in that have injured my business.

X Q. To get the items in my account I took the bills from the manufacturer; then the custom-house brokers, and my books of account since the Boston fire in November, 1872. I sold about 300 to 400 a year. My sales diminished when Mr. Imhaeuser began to sell. Before the fire I sold as high as 800 a year. I sold none of these clocks before June, 1865. When a watch was bought by a person at a distance he always paid the expenses. The 15 per cent. which I have deducted is for commission to agents. Where clocks were sold through agents, I allowed to an agent, when he sold a single clock or so, 10 per cent.; where he sold a number, 15 per cent.; and had but one agent to whom I allowed 20 per cent. The 15 per cent. I have taken as an average. This agent to whom I allowed 20 per cent. has not sold more than 24 in two years.

Never sold clock for less than $75, except the deduction of com-
114 mission. Have paid more than 13 florins to the manufacturer—as high as 25 florins when they were represented to be finished; but I had to finish them after all. Now I pay 13 florins and finish

here. This I have done since 1866. Never paid more than 13 florins since then.

Complainant rests.

Adjourned to 13th January, 1875, at 11 a. m.

JANUARY 26, 1875.

Present, counsel for respective parties.

JACOB E. BUERK sworn on part of defendant.

(Counsel for complainant objects to any examination of the witness, as he has already been examined and cross-examined. Objection overruled and exception.)

Q. Did you tell Mr. Imhaeuser that your expenses for advertising watchman time detector amounted to over $3,000 per annum?

(Objected to. Overruled; exception.)

A. I may have told him that I used to advertise to that amount; but I have not done so for four years—that is I have not advertised to that extent for four years. I don't recollect that I ever told him so. In connection with my business there were no expenses for traveling for any one. I did not travel myself, nor allow traveling to any one. The cost of printing circulars is included in the account under head of "stationery." The circular now shown me was issued by me since the decision of the case of Buerk vs. Valentine.

(Last sentence objected to by defendant—overruled and exception.)

Circular offered in evidence; objected to as immaterial; objection sustained and exception taken.

Exhibit N, marked Buerk Circular.

Q. In the suit against Valentine in the northern district of New York, in which Judge Woodruff awarded you an injunction and account as prayed for in the bill, what was the amount awarded you?

(Objected to. Objection sustained and exception taken.)

Same question put in relation to suit against Portong.

(Same objection and ruling and exception.)

115 A. In reality I have no capital with which to carry on this business—it needs none. There is money invested in it. I mean by this that I have money standing out for clocks which people have bought and not paid for. After I was burned out in 1872 it cost me $1,100 to refit my place with tools, furniture, etc. This is but a small part of my business.

WILLIAM IMHAEUSER recalled for the defense.

I had $5,000 capital invested in the business relative to the Hahn and Hahn-Meyer watches. As far as I am informed, Hahn had $12,000 in it.

X Q. Do you know how much Hahn had in the business, except from what he told you?

A. No.

Testimony closed.

A copy.

KENNETH G. WHITE, *Clerk.*

Statement of Imhaeuser & Co.

From March, 1872, to June, 1872	57
From June, 1872, to July, 1874	398
Total	455

455 Hahn-Meyer's time detectors, including duty, at $25 each	$11,375 00
Traveling expenses from March to June, 1872	250 00
Charles Keinath, commission for 57 watches at $4 each	228 00
W. Imhaeuser, commission till June, 1872	403 00
Charles Keinath, interests	257 90
Edward, by Keinath, bookkeeper expenses	50 00
Traveling expenses, June, 1872, to July, 1874	3,138 75
Manager's commission, 455 watches, at $3 each	1,365 00
Crs. and Frederick, watch repairs	400 00
Different expenses	693 43
Petty cash, as per cash account	490 00

DIFFERENT LOSSES.

Cox	$52 50	
Spaulding	40 00	
J. M. Sharb	49 00	
Shepard	94 00	
116 Krauss	40 00	
Addler	50 00	
Beetchenoro	50 00	
Divers	50 00	
Lawyer's fees, Eschro	60 00	
		485 50
Keller & Blake		370 00
McIntire's charges		643 00
Doyle & Perry's charges		60 00
W. Imhaeuser, commission from June, 1872, till July, 1874		2,500 00
Theodore Hahn, profits till July, 1874		3,005 57
Total		$25,715 15
Cash 455 watches from March, 1872, to July, 1874		$25,715 15

Theodore Hahn, profits	$3,005 57	
Our payments for business expenses	1,700 00	
		$1,305 57

Further,
For starting of the business, and making the improvement on the time detectors from 1866, beginning, have expended:

Theodore Hahn	$12,000 00	
W. Imhaeuser	6,000 00	
		$18,000 00

Which are lost at present yet.

117 Circuit court of the United States, southern district of New York.

JACOB E. BUERK
vs.
WILLIAM IMHAEUSER AND THEODORE HAHN impleaded with Charles Keinath.

Amended statement by Wm. Imhaeuser and Theodore Hahn, for the account ordered by this hon. court.

July, 1871.—By cash for 57 Hahn-Meyer's watchman's time detectors	$3,104 90

June, 1872, to June, 1874.—By cash for 194 Hahn-Meyer's watchman's time detectors, as per journal	11,122 75
June, 1872, to June, 1874.—By cash for 182 Hahn-Meyer's watchman's time detect. on trans	10,202 50
	$24,430 15

Expenses of William Imhaeuser.

To cash for 433 Hahn-Meyer's watchman's time detectors, incl. cost of making, leather pouch, package, dials, duty, freight to New York, legalization of invoices	$11,691 00
" for different business expenses, rent, &c., from July, 1871, to June, 1872	430 00
Paid to Chas. Keinath for commissions and office charges on 57 Hahn-Meyer's time detectors at $4.00	228
(Not allowable. Piper v. Brown, Off. Gaz., 1873; Rubber Co. v. Goodyear, 9 Wallace, 804.)	
	$12,349
	$24,430 15

118 (2d page.)

To cash paid Chas. Keinath, interest on money invested	$257 90
" for two-thirds of office-rent, advertisements, etc., from June, '72, to July, '74 (full $1,386.60)	924 40
" for William Schmidt, business manager, salary, in form of commission on 376 Hahn-Meyer watchmen time detect., from June, '72, to July, 1874, at $3	1,128
" for Corf & Frederic, for two-thirds of repairs	400
" for travelling expenses	3,337 75
" for two-thirds of petty expenses—full, $735.54	490 46
" for collection charges	66 03
" for losses for insolvent firms, etc	395 50
" for William Imhaeuser, interest on investment in business for $5,000.00 from July, 1871, to July, 1874, *a* 7	1,050

Expenses of Theo. Hahn.

" for business expenses, rent, postage, etc., of Theod. Hahn's business in Germany	1,700
To cash for Theod. Hahn's interest on investment in business for $12,000, from July, 1871, to July, 1874, *a* 7 per cent	2,520
	$24,609 04
	24,430 15
To balance	$188 89

WILLIAM IMHAEUSER.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

On the 3d day of December, 1874, William Imhaeuser appeared be-

fore me and made oath that the statement signed by him, as above, is a true and correct statement of the expenses and income of Wm. Imhaeuser and Theodore Hahn, relating to their business in watchman's time detectors involved in the above entitled suit.

WILLIAM IMHAEUSER.

Subscribed and sworn to before me on this 3d day of December, 1874.

R. E. STILWELL,
U. S. Com'r.

119 Circuit court of the United States for the southern district of New York. In equity.

JACOB E. BUERCK
vs.
WILLIAM IMHAEUSER, THEODORE HAHN, & Charles Keinath.

Exceptions taken by the defendants Imhaeuser & Hahn to the report made herein by Kenneth G. White, one of the masters of this court, to whom this cause was referred by an order of this court, made and entered on the day of June, 1874, which report bears date the 19th day of February, 1875.

FIRST EXCEPTION.—For that the said master in his said report has disregarded the fact set forth in the complainant's bill and in the proofs that the complainant's patent is for an improvement of a former foundation patent owned by him, but now expired, and has assessed as damages to the complainant all the profit which the complainant would have made on the infringing articles sold by the defendants had
120 he sold a like number, whereas the said master should have ascertained the value of the patented improvement to the complainant over and above the value of his expired patent in each of the patented articles, and computed his profits and the consequent damages due him, according to the ascertained value of said patented improvement over and above the value of and profits derivable under the use of the said expired patent.

SECOND EXCEPTION.—For that the said master, previous to the making of his said report, did prevent and forbid the said defendants from proving the license fee charged by the complainant to other infringers of his patent, and thereby depriving these defendants from producing their most important proofs, whereas the said master should have permitted these defendants to prove the license fee charged by the complainant, and which these defendants did offer to prove before said master, and should have computed the damages due the com-
121 plainant in accordance with such customary license fee, such license fee being the true measure of damages due the complainant under a patent for an improvement.

THIRD EXCEPTION.—For that the said master in his said report has assessed exemplary, onerous, and excessive damages, which must prove ruinous to the defendants, whereas the said master should have taken into account the fact that the articles sold by the defendants were by them, as the proofs show, sold in good faith under letters patent of the United States granted to one Meyer, and on which they paid a royalty of four dollars per watch, and that they were not therefore wilful infringers and knowingly wrong-doers, but virtually under the protection of the government until adjudicated infringers, and that the measure of

damages assessed against them should therefore not be exemplary and onerous, but at most not in excess of the profits derived by the
122 infringing defendants from their doings, which this hon. court has informed them were wrongful doings, but which they had until such division a bona fide right to believe lawful and righteous.

FOURTH EXCEPTION.—For that the said master in ascertaining the profits made by these defendants by the sale of the infringing time detectors has failed to deduct therefrom the interest on the capital invested by said defendants in said business, to wit, interest on the sum of five thousand dollars invested by the defendant Imhaeuser from July, 1871, to July, 1874, at seven per centum, and like interest on the sum of twelve thousand dollars invested by the defendant Hahn in said business from July, 1871, to July, 1874, said interest amounting to the sum of one thousand and fifty dollars on the capital of the defendant Imhaeuser, and two thousand five hundred and twenty dollars on the
123 capital of the defendant Hahn, whereas the said master should have deducted the said sums of $1,050.00 and $2,520.00 from the profits which he found the defendants to have made in their business.

FIFTH EXCEPTION.—For that the said master in computing the profits made by said defendants previous to June, 1872, accepted the statement of the former and present bookkeeper of the defendant Keinath, and rejected the sworn statement of the defendant Imhaeuser as to said time, though adopting it for the period following June, 1872, whereas the said master should have accepted the uncontradicted statement of the defendant Imhaeuser, as set forth in the statement Exhibit B, in preference to the incomplete testimony of the witness Toering, who had no knowledge of the transactions, did not include the patent fee paid to Meyer in his statement Exhibit Toering, nor the rent, salary, and other expenses paid by the defendants' firm.

SIXTH EXCEPTION.—For that the said master in the summary
124 of his report added the (excessive) damages which it is alleged the complainant has suffered to the profits alleged to have been made by the defendants, and then deducted the said profits from the total, adjudging the difference to be the amount due the complainant by the defendants, whereas the said master should have used his discretion under the circumstances of the case, and should have adjudged as amount due the complainant either the amount of damages virtually suffered by the complainant, or the profits virtually derived by the defendants, taking into consideration the fact that complainant's foundation patent is public property for the whole term covered by this suit; that the complainant derived as much profit from his sales prior to 1865 (the date of his new patent) as he did since, that the defendants had a right to use the expired foundation patent, and moreover worked under and paid royalty to the patent of Meyer, all of which facts should
125 have caused him to find to be due the complainant either the royalty usually charged by him or the actual difference in his profits since 1865, as compared with his profits prior to 1865, or the virtual profits made by the defendants, after deducting lawful interest on the capital invested by them.

N. Y., March 5, '75.

A. V. BRIESEN,
Of Counsel for Def'ts Imhaeuser & Hahn.

(Endorsed:) U. S. circuit court, southern district of N. Y. J. E. Buerck vs. W. Imhaeuser, T. Hahn, and Chas. Keinath. In equity.

Exceptions taken by defendants Imhaeuser & Hahn to master's report. A. V. Briesen, of counsel. Filed M'h 20, 1875.

126 United States circuit court, southern district of New York. In equity.

J. E. BUERCK
vs.
W. IMHAEUSER & AL.

SIR: Please take notice that the within amendment to the bill of exceptions filed March 20th, 1875, will be filed after service on you, and that I was prevented from taking the exception contained in this amendment sooner by the protracted absence of Mr. K. G. White from the clerk's office, and my consequent inability to find and inspect Exhibit A. Said exhibit was found yesterday, and I am now able to show the error referred to in the master's report.

Very respectfully,

A. V. BRIESEN,
Of Counsel for Def'ts Imhaeuser and Hahn.

To J. VAN SANTVOORD, Esq.,
Solicitor for Compl't.

N. Y., MARCH 24, 1875.

127 Circuit court of the United States for the southern district of New York. In equity.

JACOB E. BUERCK
vs.
WILLIAM IMHAEUSER, THEODORE HAHN, AND Charles Keinath.

The bill of exceptions filed in the above mentioned cause to the report of the master, Kenneth G. White, herein, and which bill was filed March 20th, 1875, is hereby amended by adding thereto the following, to wit:

"SEVENTH EXCEPTION.—For that the said master in his said report has found that 48 of the infringing watchman's time detectors were still in the possession of the defendants on the 16th December, 1874, whereas the said master should have found that 28 of the said infringing watchman's time detectors were in the defendants' possession December 16, 1874, as appears by Exhibit A."

A. V. BRIESEN,
Of Counsel for Def'd'ts Imhaeuser & Hahn.

NEW YORK, *March 24th*, 1875.

128 (Indorsed:) U. S. circuit court, southern district of N. Y. J. Buerck vs. Imhaeuser. In equity. Notice of filing addition to bill of exception and additional exception.

Rec'd copy of within notice and additional exception this 24th March, 1875.

J. VAN SANTVOORD,
Compl't's Sol'r.

Filed March 24, 1875.

128½ FRIDAY, *November 12th*, 1875.

The court meets pursuant to adjournment and is opened by proclamation.

Present, Judge Johnson.

JACOB E. BUERK
vs.
WILLIAM IMHAUSER & AL.

A motion in the above cause to set aside the master's report, filed herein on exceptions filed by defendants thereto, coming on, Mr. A. V. Briesen is heard in favor of motion and in behalf of the defendant. Mr. Francis Forbes is heard in opposition thereto. Mr. John Van Santvoord is heard in opposition thereto. Mr. Briesen is heard in reply.

Curia advisari vult.

129 U. S. circuit court, so. dist. of N. Y.

JACOB E. BUERK
vs.
WILLIAM IMHAEUSER ET AL.

JOHNSON, Cir. J.:

Under the interlocutory decree in this case the master was ordered among other things to report the gains and profits which the defendants or either of them have received from the manufacture, use, and sale of the patented improvement of the plaintiff, and also to assess and report the damages, if any, the plaintiff had suffered or sustained by reason of the infringement over and above the said gains and profits.

He found and has reported that the defendants, up to the time when Keinath left the firm, had sold 61 infringing time detectors with a profit over and above the allowances he made to them for the cost and expenses of $1,748.24. That the subsequent sales of the other two defendants numbered 376, with a resulting profit over and above the allow-
130 ance of $3,748.28.

The master further reported that the damages which the plaintiff had suffered were as follows:

On the 61 time detectors sold by all the defendants, $53.25 on each; and on the 376 sold by Imhaeuser & Hahn, $53.25 on each, amounting for the latter to the sum of $20,022.00, and for the former to the sum $3,248.25.

The defendants have excepted to the report in this particular in due form, and contend that the master has erred in this ascertainment of damages.

The method in which the master has proceeded is apparent from the report. He has ascertained from the complainant that he sells his watches at $75 each, and that they cost him about $18 each, and that on the average he pays $3.75 commissions for sales. These sums, deducted from $75, give what he calls a net profit of $53.25 on each watch. This amount, multiplied by the number of watches which the defendants sold, produced the sums which the master has found as damages.

The patent act of 1870, substantially re-enacted in the Revised
131 Statutes, gives to a successful plaintiff, in an equity suit for an infringement, the damages which he has sustained in addition to he profits to be accounted for by the defendants. But it by no means

follows that in every case such damages are in excess of the amount of profits made by the infringer. As is said by Mr. Justice Clifford, in Carew vs. Boston Elastic Fabric Co. (5 Fisher, 108, 109), if it appears that the injuries which the complainant sustained by the infringement are greater than the gains and profits realized by the defendants, then the complainant is entitled to recover compensation for the excess of the injuries sustained beyond the gains & profits received by the defendants. And yet in that case, although the plaintiff succeeded, the court was of the opinion that the recovery ought not to go beyond the gains and profits of the defendants.

In the present case the defendants were manufacturing, under a patent of the United States, the watches which are now adjudged to be an infringement of the plaintiff's patent. They were not wilful in-
132 fringers, and are not therefore to be visited with punitive damages. It is only actual damages which are proved to have been sustained by the plaintiff that he can in any event recover. It is not enough that he may have suffered loss, for he cannot have compensation for conjectural losses. The losses must be proved and not guessed at. (Philip vs. Work, 17 Wall., 462.)

It was not made to appear that the plaintiff could have sold his watches to the persons who purchased from the defendants. The watches have been adjudged to be identical in principle, but they differ in structure and appearance; and it cannot be known that those who bought the infringing article would have bought the plaintiff's watches under any circumstances. The difference in structure as well as the difference in price enter into that question, and no means are afforded for determining it by the proofs. (Smith vs. O'Connor, 6 Fisher, 469; Carter vs. Barker, 4 Fisher, 410.) The inquiries suggested by these cases as pertinent to the assessment of plaintiff's damages do not warrant the
133 adoption of the result stated in the report. The damages in such a case must be confined to the direct and immediate consequences of the infringement, and not embrace those which are both remote and conjectural.

In the Goodyear Dental Vulcanite Company vs. Van Antwerp (9 Official Gazette, 497), Judge Nixon, speaking of the modes of ascertaining damages and profits, says:

"In order to ascertain these it is equally pertinent to inquire how the owner of the patent has seen fit to use his invention. He may retain a close monopoly in it, & then the damages are computed by investigating the defendant's profits, which are reckoned a fair criterion of the complainant's loss; or he may grant license fees, allowing the benefits of his invention to every one who will pay a stipulated price for its use."

In this the learned judge was but reiterating what had been said by the Supreme Court in granting a new trial in the case of Seymour vs. McCormick (16 How., 488-491). That court declared further that—

"Actual damages must be actually proved, and cannot be as-
134 sumed as a legal inference from any facts which amount not to actual proof of the fact. What a patentee would have made if the infringer had not interfered with his rights, is a question of fact and not a judgment of law.

"The question is not what speculatively he may have lost, but what actually he did lose. It is not a judgment of law, or necessary legal inference, that if all the manufacturers of steam engines & locomotives, who have built & sold engines with a patented cut off or steam whistle,

had not made such engines, that therefore all the purchasers of engines would have employed the patentee of the cut off or whistles.

"There is another error involved in this assessment of damages, & that is that the estimated profit of the patentee embraces not only that derived from the sale of the patent privilege, but also the whole manufacturer's profits upon the materials & workmanship of the whole article. When the inventor charges a royalty or license fee, he isolates the value of the use of his invention, and separating it from all other
135 things fixes its value as against himself and in favor of others. If he also makes and sells the machine in which his invention is embodied, there will enter into the price not only the cost of materials and the ordinary profit of manufacture, but also an amount of additional profit, which is or is the equivalent of the license fee, and adds to the price that additional sum as compensation for the invention. It is this price of the invention which the inventor is entitled to recover as damages against an infringer, and in ordinary cases it is this only. Wanton infringement may introduce other considerations, but such is the measure of damages where the case is one simply of infringements.

"In cases where the patent is for a distinct improvement, separable from the rest of the article, as in the case put by the plaintiff's counsel of a wagon with a patent pole, the rule is admitted and settled (Seymour vs. McCormick, 16 How., 491; Gould Manufacturing Co. vs. Cowing, 8 Official Gazette, 277; Mawry vs. Whitney, 14 Wall., 620; American Nicholson Pa. Co. vs. Elizabeth City, 6 Offi. Gaz., 764; Littlefield vs. Perry, 21 Wall., 228)."

136 The same principle is I think applicable to a case of this kind. The watch is open to the manufacture of every one, and it is common to both the plaintiff's patented article and to the infringing article of the defendant. The wrong which the case shows the plaintiff to have sustained is the use of his invention in the making by the defendants of the infringing watches. They have taken his invention and used it in making the infringing watches; and it is the value of that use, the right to which belonged to the plaintiff, that they have appropriated to themselves. For this the plaintiff is entitled to recover in damages. But this rule has been disregarded, and the case does not furnish any evidence which can either support the actual finding or form the basis for a correction in this respect by the court. The burthen in this respect was upon the plaintiff, and as the account of the profits made by the defendants under the evidence charges them with all that they have made by the use of the plaintiff's in-
137 vention, and does not appear to be an inadequate compensation for the injury which he is shown to have suffered, a decree upon the basis of the computation of profits contained in the report will in my opinion do justice between the parties.

The exception already discussed is the principal objection to the report, and covers also the third and sixth exceptions.

The second exception has no foundation in the evidence or offers of the defendants. It does not appear to have been proposed to prove that the plaintiff had any license or patent fee. The offer was only to show what amount the plaintiff had recovered in another suit, which was immaterial.

The fourth and fifth exceptions seem to turn upon the application of evidence by the master, and raise no question requiring examination.

The seventh exception is founded on an obvious mistake of the master in determining the effect of one of the exhibits. He has, by including a column of figures not forming part of the exhibit, found that

138 the defendants had on hand 48 infringing watches, whereas it in fact only showed 28 to be so on hand. It will be modified accordingly.

The decree will separate the profits and damages awarded against all the defendants, $1,748.24, and those awarded against Imhaeuser & Hahn, $3,748.28, and will be with interest from the date of the master's report, Feb'y 19, 1875.

It must be settled upon notice before being entered.

(Endorsed:) Jacob E. Buerk vs. William Imhaeuser et al. Opinion on exception, &c. Johnson, cir. j. Mr. Van Santvoord for pl'ff, Mr. Briesen for def't. Filed Nov. 11, 1876.

139 At a stated term of the circuit court of the United States of America for the second circuit and southern district of New York, held at the court rooms thereof, at the city of New York, on the 14th day of December, 1876.

Present, Hon. Alexander S. Johnson, cir. judge.

JACOB E. BUERK
vs.
WILLIAM IMHAEUSER, THEODORE HAHN, AND Charles Keinath.

This cause having come on to be heard upon the report of Kenneth G. White, esq., one of the masters of this court, to whom it was referred by the decree of this court made and filed in this cause on the twenty-seventh day of June, 1874, on the final hearing therein, to take and state and report to the court an account of the number of watch-
140 man's time-detectors embracing complainant's invention, as described and claimed in his letters patent, No. 48048, as mentioned and set forth in the bill of complaint in this cause, that had been made or caused to be made, and also the number sold by the said defendants or either of them since the sixth day of June, 1865, and also the number now on hand, and also the gains and profits which the said defendants or either of them have received by and from the manufacture, use and sale of the said patented improvements, and that he also ascertain, assess and report what, if any, damages the complainant has suffered or sustained by reason of the said infringement over and above such gains and profits, which report has been duly filed and bears date February 19, 1875, and also upon exceptions taken to said report on the part of the said defendants, Imhaeuser & Hahn, and the said report having been read, and the said cause having been argued by Mr. J. Van Santvoord and Mr. Francis Forbes, of counsel for said com-
141 plainant, and by Mr. A. V. Briesen, counsel for the said defendants, Imhaeuser and Hahn, and the bill of complaint having been taken as confessed against the other defendant, Charles Keinath, as is stated in said decree, and due deliberation having been had thereon, it is ordered, adjudged and decreed, and this court by virtue of the power and authority therein vested doth order, adjudge and decree that the said defendants, William Imhaeuser, Theodore Hahn and Charles Keinath, are liable to the said complainant for the sum of $1,748.24, and interest thereon at 7 per centum per annum from February 19, 1875, the date of said master's report, for the gains and profits that have accrued to and that have been received by them from said infringment while

the said Keinath was with them in their firm, and that the said defendants, William Imhaeuser and Theodore Hahn, are, in addition thereto, liable to the said complainant for the further sum of $3,748.28, and interest thereon from February 19, 1875, the date of said master's
142 report, for the gains and profits that have accrued to and have been received by them from said infringement after the said Keinath left said firm.

And it is hereby further ordered, adjudged, and decreed that the said defendants, William Imhaeuser, Theodore Hahn and Charles Keinath, pay to the said complainant the said sum of $1,748.28, with interest thereon as aforesaid down to the date of this decree, amounting together to the sum of $1,961.00, and that in addition thereto the said William Imhaeuser and Theodore Hahn pay to the said complainant the said further sum of $3,748.28, with interest thereon as aforesaid down to the date of this decree, amounting with such interest to the sum of $4,205.00.

And it is further ordered, adjudged and decreed that the said defendants, William Imhaeuser, Theodore Hahn and Charles Keinath, also pay to the said complainant the sum of two hundred and sixty-eight dollars and ninety-six cents, his taxable costs and disburse-
143 ments as taxed in this suit, and that the said complainant have execution as provided by law for such costs and for the other sums above decreed to be paid as aforesaid.

Enter.

ALEX. S. JOHNSON,
Cir. J.

(Endorsed:) U. S. cir. court S. D. of N. Y. J. E. Buerk vs. W. Imhaeuser, Theodore Hahn & Charles Keinath. Final decree. J. Van Santvoord, sol'r for compl't A. V. Briesen, of counsel for def'ts Hahn & Imhaeuser. Filed Dec. 14, 1876.

144 Circuit court of the United States, southern district of New York. In equity.

JACOB E. BUERK
v.
WILLIAM IMHAEUSER, THEODORE HAHN, AND Charles Keinath.

SIR: Please to take notice that on the affidavits of J. Van Santvoord and Francis Forbes, and the injunction, order, and affidavit of service thereof, with copies of which you are herewith served, and the pleadings, proofs, and papers on file in the clerk's office in this cause, a motion will be made before the circuit court of the United States for the southern district of New York, before the judges of said court, at the United States court room, No. 27, Chambers street, in the city of New York, on the 23d day of March, 1875, at 11 o'clock in the forenoon, or as soon thereafter as counsel can be heard, that an attachment issue against the defendant, William Imhaeuser, to bring him before this court to answer for his contempt of said court in violating the injunction in this cause by selling Watchman's Time Detectors and Paper Dials, forbidden by said injunction, or that said William Imhaeuser stand committed to the county jail of the city and county of New York; and that the infringing Watchman's Time Detectors, now in the possession of said Imhaeuser, be delivered up to the complainant;

and for such other and further order or relief in the premises as to the court may seem proper.

Dated March 18, 1875.

Yours, &c.,

J. VAN SANTVOORD,
Solicitor for Complainant.

To WILLIAM IMHAEUSER, Esq.,
KELLER & BLAKE, Esq'rs,
His Solicitors.

Circuit court of the United States, southern district of New York. In equity.

JACOB E. BUERK
v.
WILLIAM IMHAEUSER ET AL.

CITY AND COUNTY OF NEW YORK,
Southern District of New York, ss:

JOHN VAN SANTVOORD, being duly sworn, deposes and says, that he is the solicitor for the complainant in the above entitled causes; that the same was brought to restrain the said defendants from infringing letters patent of the United States, No. 48048, granted to complainant June 6, 1865, for an improvement in watchman's time detectors, and for an account of gains and profits, and for damages for such infringement; that the bill of complainant therein was filed July 5, 1872; that the bill was taken, as confessed, against said defendant Keinath on or about the 9th day of November, 1872; that the other defendants Imhaeuser and Hahn put in their answer to said bill, and that said cause was heard on the pleadings and proofs therein at the February term (1874) of this court, before his honor Judge Woodruff, who, on or about the 10th day of June, 1874, rendered his decision in favor of the complainant, and that, in accordance with said decision, a decree against all the defendants was duly entered in said cause on or about the 27th day of June, 1874, declaring the said patent to be a valid patent, and that the said defendants had infringed the same, and ordering
146 that an injunction issue against each and all of the said defendants, enjoining and restraining them and each of them from infringing said patent, and that it be referred to Kenneth G. White, esq., master, to ascertain the damages complainant has sustained, &c.; that said injunction was duly issued July 8, 1874, and served, as appears by the annexed affidavit of William T. Smith, and proceedings were had and evidence taken before said master, who filed his report on the 19th day of February, 1875.

J. VAN SANTVOORD.

Subscribed and sworn to before me this 18th day of March, 1875.

W. HAUFF (146),
Notary Public, N. Y. City and County.

Resworn to before me this 30th of March, 1875.

R. E. STILWELL,
U. S. Com.

Circuit court of the United States, southern district of New York.

JACOB E. BUERK
v.
WILLIAM IMHAEUSER ET AL.

CITY AND COUNTY OF NEW YORK,
Southern District of New York, ss:

FRANCIS FORBES, being duly sworn, says that he acted as counsel for the complainant on the accounting in this cause before Kenneth G. White, esq., master. That said Imhaeuser testified under oath, on said accounting, as nearly as deponent can recollect, and as shown by the minutes of the master, as follows:

"I have sold some Hahn-Meyer watches since June last—have sold six; they were the same kind of watches which are in this suit; they are not included in my account; I sold them to the Milwaukee
147 and St. Paul Railroad, and they were paid for. I sold one to go to Japan, October 6, 1874. (It) was ordered from Japan; have sold paper dials for (three) watches since June last; they are not included in account."

And in cross-examination by Mr. Briesen he testified:

"The watches which were sent to the Milwaukee Railroad were sent about four or five weeks ago; I wrote to the company to keep them in stock until I could send other ones; I told him the reason was that there was an injunction. The watches have not yet been sent back, but I expect them every day."

The defendant Imhaeuser also testified, as near as deponent can recollect, in reference to the time detectors on hand in said accounting.

"Q. How many of these time detectors have you on hand at the present time—I mean of those similar to complainant's patent?

"A. The number of watches shown on the books is about eighteen. I charged them to Theodore Hahn, and will send them to back to Europe.

"Please give, to-morrow, the number of these time detectors that you have on hand?

"I will do so."

On December 16, 1874, the defendant produced before the master a list of the numbers required, and the same is marked Exhibit Q.

Defendant said, "The papers I produce this morning were made out by my bookkeeper and myself." A copy of said exhibit is annexed to this affidavit.

And further deponent saith not.

FRANCIS FORBES.

Sworn to before me this 18th day of March, 1875.

WILLIAM HAUFF (146),
Notary Public, N. Y. City and County.

Resworn to before me this 31st March, 1875.

R. E. STILWELL,
U. S. Com.

148 NOW ON HAND.

2383	93	2	1986	15	20	2604
2834	82	7	1970	17	13	10
31	83	2597	1862	21	7	16
73	85	98	1989	22	10	18
33	92	2152	1982	23	8	2719
74	2600	2601	1954	2712	11	2552
94	6		2714	16	4	2538

Exhibit Q.
K. G. W.
M.

Circuit court of the United States, southern district of New York.

JACOB E. BUERK, COMPLAINANT,
v.
WILLIAM IMHAEUSER, THEODORE HAHN, and Charles Keinath, defendants.

The President of the United States to William Imhaeuser, Theodore Hahn, and Charles Keinath, their clerks, agents, servants, attorneys, and workmen, and each and every of them, greeting:

Whereas it has been represented to us, in our circuit court of the United States for the second circuit and southern district of New York, that letters patent of the United States were issued in due form of law to Jacob E. Buerk, on the 6th day of June, 1865, for a certain improvement in watchman's time detector, said letters patent being known and distinguished as letters patent No. 48048, and which were granted for the term of seventeen years from the said 6th day of June, 1865; and that you, the said defendants William Imhaeuser, Theodore Hahn,
149 and Charles Keinath, have infringed the rights secured by the aforesaid letters patent by manufacturing, or causing to be manufactured, using, and selling to others time detectors manufactured and made substantially as described and claimed in the said letters patent, contrary to the form of the statutes in such cases made and provided:

Now, therefore, we do strictly command and perpetually enjoin you, the said William Imhaeuser, Theodore Hahn, and Charles Keinath, and each of you, and your and each of your clerks, agents, servants, and workmen, under the pains and penalties which may fall upon you and each of you in case of disobedience, that you forthwith desist and refrain from directly or indirectly making, manufacturing, using, or selling, or in any manner disposing of, in violation of said letters patent No. 48048, any watchman's time detectors, or any article, by whatever name called or known, involving or embracing or made in pursuance of the invention or improvement substantially described and claimed in the said letters patent No. 48048, and from in any way using or putting into practice any invention covered or secured to said complainant by said letters patent.

Witness the Hon. Morrison R. Waite, Chief Justice of the Supreme Court of the United States of America, at the city of New York, this 8th day of July, 1874 (one thousand eight hundred and seventy-four).

[SEAL.] KENNETH G. WHITE,
Clerk.

J. VAN SANTVOORD,
Complainant's Solicitor,
41 *Park Row, New York.*

CITY AND COUNTY OF NEW YORK,
Southern District of New York, ss:

William T. Smith, being by me duly sworn, deposeth and saith, that on the 8th day of July, 1874, he served the foregoing injunction upon the defendants, William Imhaeuser and Charles Keinath, therein named, by delivering to each of them a copy of the said injunction, and at the same time showing the said original injunction and the seal
150 of the court impressed thereon, and that he made said service on the said William Imhaeuser at No. 212 Broadway, and on said Charles Keinath at No. 45 New street, both in said city of New York.

(Signed) WILLIAM T. SMITH.

Sworn to before me this 8th day of July, 1874.

(Signed) CLARENCE CARY (189),
Notary Public, N. Y. City and County.

I certify that the above is a true copy of the injunction and proof of service of same, on file in this office.

KENNETH G. WHITE, *Clerk.*

Circuit court of the United States, southern district of New York. In equity.

JACOB E. BUERK
v.
WILLIAM IMHAEUSER ET AL.

Please to take notice that in addition to the papers already served on you, the affidavits of Ivory F. Gould, Otis T. Gould, and Jacob E. Buerk (with copies of which you are herewith served) will also be read to the court at the hearing of the motion for an attachment, &c., for the defendant Imhaeuser's contempt of this court in violating the injunction in this cause, &c., notice of which motion was served on you (said Imhaeuser) on March 18th, 1875, and on your surviving solicitor of record, Charles F. Blake, on March 19th, 1875, and which was sent before his honor Judge Woodruff to be heard.

You are further notified that said watchman's time detector, No. 2973, referred to in the accompanying affidavits, is at my office, subject to your inspection, and that the same is considered by the plaintiff
151 an infringement of complainant's patent, and its sale a violation of the injunction herein.

Dated New York, May 29th, 1875.

J. VAN SANTVOORD,
Complainant's Solicitor.

To WILLIAM IMHAEUSER, Esq.
CHARLES F. BLAKE, Esq.,
His Surviving Solicitor.
A. V. BRIESEN, Esq.,
Of Counsel.

Circuit court of the United States, southern district of New York.

JACOB E. BUERK
v.
WILLIAM IMHAEUSER ET AL.

STATE OF NEW YORK,
Northern District of New York, ss:

Ivory F. Gould being duly sworn, deposes and says, that on the 12th

day of May, 1875, at the city of Troy, in the State of New York, he bought of Imhaeuser & Co., of which firm William Imhaeuser, one of the defendants in this suit, is a member, a watchman's time detector, of the style shown on the annexed circular, and marked A, for the sum of sixty-seven dollars and fifty cents; said detector having a series of springs in the cover, which could be pressed down by different keys, and make marks against raised letters on the face of the detector on a revolving paper dial, to indicate the time at which different stations were visited; that a bunch of twelve keys accompanied the detector. Annexed is the bill of the purchase of said clock, marked B.

Deponent further says that he sent said detector to Otis T.
152 Gould, his son, at Boston, Mass., on the 13th day of May, 1875, by the American Express Company, whose receipt is hereto annexed, and marked C.

I. F. GOULD.

Subscribed and sworn to before me this 26th day of May, 1875.

N. B. SYLVESTER,
United States Commissioner, Northern District of N. Y.

EXHIBIT C.

Before N. B. Sylvester, U. S. Com., 26th May, 1875.

(96.)

[American Express Company. Principal offices, 65 Broadway, New York; corner Union and Fulton streets, Troy; 3 Place d'Armes, Montreal.]

Domestic bill of lading.

$75 value.] TROY, N. Y., *May* 13, 1875.

Received from I. F. Gould sealed and said to contain val. seventy-five dollars.

Addressed: Otis T. Gould, 84 Washington street, Boston, Mass.,

Which it is mutually agreed is to be forwarded to our agency, nearest and most convenient to destination only, and there delivered to other parties to complete the transportation. It is further agreed, and is part of the consideration of this contract, that the National Express Company are not to be responsible, except as forwarders, for any loss or damage arising from the dangers of railroad, ocean or river navigation, fire, &c., unless specially insured by them, and so specified in this receipt. It is further agreed that said company shall not, in any event, be liable for any loss, damage or detention caused by the "acts of God, civil or military authority, or by rebellion, piracy, insurrection or riot, or the dangers incident to a time of war."

Freight, ; insurance, .

For the company.

S. D. CRISP.

153 EXHIBIT B.

Before N. B. Sylvester, U. S. commissioner, New York, May 12, 1875.

Terms cash. P. O. box 4798.

TROY, N. Y., *May* 26, 1875.

Mr. I. F. Gould, bought of Imhaeuser & Co., sole agents of Theodore Hahn's and Hahn Meyer's time detectors, 212 Broadway, room 13.

(2973) 1	Watchman's time detector	$75 00
	10 per cent. discount	7 50
		$67 50

Received payment,

IMHAEUSER & CO.

Parties ordering dials will please send samples, as we have several sizes. We call your attention to be careful that the hole below the indicator be always clean of dirt and paper clippings.

Circuit court of the United States, southern district of New York.

JACOB E, BUERK
v.
WILLIAM IMHAEUSER ET AL.

UNITED STATES OF AMERICA,
District of Massachusetts, ss :

Otis T. Gould, being duly sworn, deposes and says that on the fourteenth day of May, 1875, he received a watchman's time detector, marked 2973, United States patent, October 20, 1874, and similar to the detector, marked A, on the annexed circular, from the American Express Company, said detector being reported to him by said company to have been shipped to him by Ivory F. Gould, of Troy,
154 New York. That he delivered said detector to Mr. Jacob E. Buerk, complainant in this suit, on the 14th day of May, 1875.

OTIS T. GOULD.

Subscribed and sworn to before me this 21st day of May, 1875.
[L. S.] JOHN G. STETSON,
U. S. Commissioner.

Circuit court of the United States, southern district of New York.

JACOB E. BUERK.
v.
WILLIAM IMHAEUSER ET AL.

U. S. OF AMERICA,
District of Massachusetts, ss :

Jacob E. Buerk, being duly sworn, deposes and says that on the fourteenth day of May, 1875, he received a watchman's time director from Otis T. Gould, of Boston, marked 2973, U. St. patent, October 20, 1874, and similar to the detector marked A on the annexed circular, the same as is referred to in annexed affidavit of Otis T. Gould. That on Saturday, May, 15, 1875, he delivered said detector to Mr. J. Van Santvoord, his counsel, at the city of New York.

JACOB E. BUERK.

Subscribed and sworn to before me this 21st day of May, 1875.
[L. S.] JOHN G. STETSON,
U. S. Com.

155 WATCHMAN'S IMPROVED TIME DETECTORS.

U. S. patents, Dec. 28, '69; April 22, '73; Aug. 2, '74; Oct. 20, '74; and Nov. 10, '74.

Parties using or selling these instruments without authority from us will be dealt with according to law.

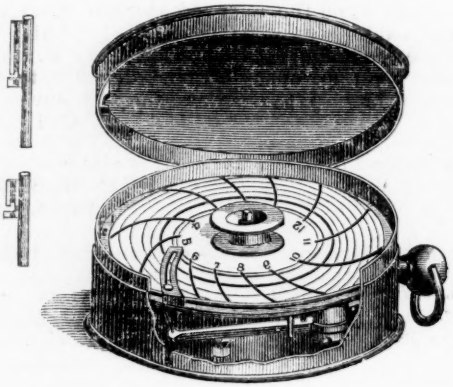
In all large factories, warehouses, banks, roailroad depots, machine shops, stables, etc., as also in other public buildings, it is absolutely necessary that watchmen be employed to watch and guard during the night for the better protection of such buildings, and the property contained therein.

To control the movements of such watchmen, and to be satisfied that their duty has been faithfully fulfilled, resort is had to machinery, the most improved of which are the within described.

A minute inspection will satisfy every one that they have all the advantages of modern invention in this branch of art, above all competition; that they are reliable time-pieces and perfect in every detail of their construction.

They can be adjusted by any watchmaker, in case they should ever need cleaning, etc.; they are portable and strongly made and enclosed in a good brass case; the controlling apparatus is of the greatest solidity.

The watch and apparatus are guaranteed in every case as perfect.



Theodore Hahn's Watchman's Time Detector.

This detector is covered by a United States patent, 138084, April 22, 1873.

On the various stations of the watchman's beat, keys are placed and fastened within or outside the buildings, to indicate the stations by the number.

The watchman, before entering upon his duties in the evening, re-

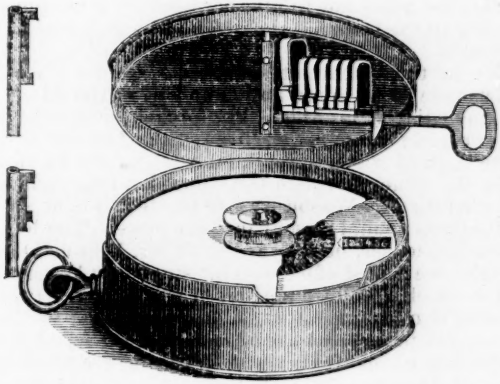
ceives the watch, which is provided with a fresh paper dial, wound up and locked. He makes his rounds and visits the different stations, according to instructions received from his employer.

In making his rounds and arriving at a station, the watchman will insert the key into the key-hole on the side of the watch, and while doing this, a hole or a figure will be pricked in the dial of the watch at exactly the minute the hand on the watch shows the time.

On delivering the watch in the morning to the person in charge, the latter, on opening the same, can see at a glance how often and when the rounds have been made during the night, whether every station has been visited or any neglected at each round, and what space of time elapsed between the different visits, etc.; in short, it tells the history of the night's doings, of the vigalence or the carelessness of the watchman.

These patent improvements have the advantages, that with one watch and watchman, not only one, but several buildings can be guarded by placing one or more of the station keys in each building, depot, warehouse, workshop, or stable, etc. It also shows whether the watchman takes the trouble in making his rounds to visit regularly the isolated stations.

Exhibit A.—Before N. B. Sylvester, U. S. Comm'r, the 26th May 187 .



Imhaeuser's Watchman's Time Detector.

This detector is covered by a United States patent, No. 156098, October 20, 1874.

This time detector is constructed on the same principle. The watchman inserts the key into the key-hole on the side of the watch and gives it one turn to the right; by doing this the paper is pressed against the figure stamps, corresponding with the number of the key, and the number of the station as also the figure of the time will be imprinted on the paper exactly at the time when the watchman was visiting the stations.

The reliability and usefulness of these watches have been certified and confirmed by many proprietors of large establishments, as can be seen by certificates filed in our office.

The prices, with twelve keys, for twelve stations, are $75, C. O. D.

IMHAEUSER & CO.,
212 *Broadway, cor Fulton Street, New York.*

P. O. box 4798.
Agents:

155½ Circuit court of the United States, southern district of New York
In equity.

J. E. BUERCK
vs.
W. IMHAEUSER ET AL.

STATE OF NEW YORK,
City and County of New York, ss:

A. V. BRIESEN, being duly sworn, deposes and says:

On the 12th day of Nobember, 1874, I was engaged by defendants Imhaeuser and Hahn to be of counsel for them in this suit, and have ever since with the consent of Mr. Blake advised them to the best of my ability. I can certify that Mr. Imhaeuser has always expressed himself anxious to obey the injunction herein; that he has asked my advice in many matters pertaining thereto, which advice has invariably been to take special pains not to give occasion for a charge of contempt, especially owing to the fact that the defendants still deal in non-infringing time detectors.

The transfer by the defendants of six clocks (though without dials) to Milwaukee came to my notice no earlier than Dec. 15th, 1874,
156 and I immediately informed Mr. Imhaeuser that he should take steps to revoke the sale, and insisted that he should order them back the same day. I was assured that such would be done, and was shown by him the same afternoon the draft of a letter addressed to Mr. Wason, and wherein Mr. Wason was requested to hold said six clocks in stock until others should be sent in their place. The letter, I was informed by Mr. Imhaeuser, he forwarded to Mr. Wason December 16th, and he brought me a post-office receipt signed by Wason and proving that said letter which had been registered was duly received.

The six clocks in question were thereupon returned to Mr. Imhaeuser and by him handed to me, and they are now in my custody in my office.

The examination before the master in this cause was terminated on the 20th day of January, 1875; his report was filed February 19th. Since then I have submitted to the complainant's counsel papers showing and served notice that I would move for a rehearing in this cause on the ground of newly discovered evidence. This notice was
157 served on Mr. Van Santvoord, March 10th, 1875, and on the 18th of March, 1875, the papers informing Mr. Imhaeuser of the plaintiff's intention to attach him for contempt were served.

The master's report herein sets forth that in his opinion Mr. Imhaeuser had on hand on the 16th December 48 clocks, amongst which number those six sent to Milwaukee are included, as appears from the number which the master in his report reported as sold, the master thus considering said six clocks still in the possession of the defendants, which indeed they were, in view of Mr. Imhaeuser's honorable retraction.

The master erred in accounting 48 clocks on hand; the error occurred by his counting from Exhibit 2 the one row of figures as "on hand" which belongs to the list of clocks sold.

To this report the complainant has not, to my knowledge, filed any exceptions, although the thirty day' allowed for filing the same have expired.

The question of dials sold by defendants after the injunction to previous purchasers of the infringing clocks, which clocks were ac-
158 counted for by defendants before the matter was raised by complainant's counsel before the master, and the master ruled out the question relating to such sale of such dials.

A. V. BRIESEN.

Sworn to before me this 16th day of Oct., 1875.

JOHN A. SHIELDS,
U. S. Commissioner S. D. of N. Y.

(Endorsed:) United States circuit court, southern dist. of New York. J. E. Buerck vs. W. Imhaeuser et al. In equity. Affidavit of A. V. Briesen.

159 *Return registered letter receipt.*

The postmaster who delivers the letter herein described will have this return receipt signed by the party addressed, and immediately inclose it to postmaster at New York.

No. 23124. DEC. 16, 187 .

Mailed at New York, N. Y. Co., N. Y., by Imhaeuser & Co., 4798, a letter addressed to R. Wason, Milwaukee, Wis.

Received the above described letter.
Stamp here the office and date of delivery.

{ MILWAUKEE, WIS., DEC. 23, 5 A. M. } (Sign here.) ROBERT WASON.

(Endorsed:) Milwaukee, Wis., Dec. 19, 2 p. m.

160 Circuit court U. S., southern district of New York. In equity.

J. E. BUERCK
vs.
W. IMHAEUSER & AL.

HAMILTON E. TOWLE, being duly sworn, deposes and says:

I reside in Roselle, New Jersey, and am a consulting engineer and mechanical expert at No. 30 Courtland street, New York city; my age is 42 years. I have frequently acted as expert in patent cases of great importance.

I have examined and compared the watchman's time detector, marked patented October 20, 1874, (No. 2771,) and the letters patent of June 6, 1865, No. 48048, granted to J. E. Buerck for watchman's time detector.

I find that said patent in its first clause of claim covers the combination of three elements, to wit: A false revolving dial, (2) a stationary index, and (3) spring-points for piercing said dial. The false dial is described as a remarkable paper dial, graduated and marked as follows:

1. With a series of concentric rings.
2. With figures from 1 to 12.

161 The stationary index is made to project over the false dial, and its principal functions are primarily to enable the operator to

adjust the false dial to the proper position with reference to time; and secondarily, it serves as a projecting bridge for the spring points to operate against.

I find that the exhibit No. 2471 does not use two of the elements of said claim, to wit, the stationary index and the false dial. It is adopted to use on a metallic dial, which is not removable, a blank paper disc, which is not a dial because not graduated, and which an unskilled operator can supply by cutting a disc of proper size from ordinary paper. There being no graduation on the disc, hence no dial, the necessity for an index ceases, and there is in fact no index in said exhibit, nor is its equivalent therein present or necessary. I therefore find that the first claim of said patent does not describe the exhibit 2471.

In respect to the second clause of claim in said patent, it is as follows:

"Producing the perforations on the paper dial or its equivalent from the inside out instead of from the outside in as before."

162 The Exhibit No. 2471 contains a series of spring-marking devices in its lid, which are outside of and above the blank disc, and are worked from the outside inward towards the stationary metallic dial, and hence not from the inside out as particularly described in claim 2.

The general principle of operation of the Exhibit 2471 is, moreover, essentially different from that described in said letters patent.

HAMILTON E. TOWLE,
Civil Eng'r.

Subscribed and sworn to before me this twelfth day of November, 1875.

R. E. STILWELL,
U. S. Comm'r.

(Endorsed:) Affidavit of H. E. Towle.

163 [Chicago, Milwaukee & St. Paul Railway. J. J. Slocum, P. A.]

PURCHASING AGENT'S OFFICE,
Milwaukee, Jan. 5th, 1875.

Messrs. IMHAUSER & Co.,
New York:

DEAR SIRS: Your favor of the 19th ult'o is rec'd & contents noted. I have no objections to exchange the watches provided you send 6 equally as good in every respect to put in their place before they are given up.

Yours truly,

J. J. SLOCUM.

(Endorsed:) 1874. Milwaukee, 5 Jan. J. J. Slocum, D. F.

164 THE WESTERN UNION TELEGRAPH COMPANY.

[The rules of this company require that all messages received for transmission shall be written on the message blanks of the company, No. 068, under and subject to the conditions printed thereon, 122, which conditions have been agreed to by the sender of the following. G. H. Mumford, sec.; T. T. Eckert, gen. sup't, New York; William Orton, pres't.]

Dated Milwaukee, 14. Rec'd at 145 Broadway, April 14, 1874.

To IMHALUSER & Co.,
208 *Broadway :*

Send me by express six watchman's time detectors, same size as last letter by mail. Answer how soon you can ship.

R. WASON.

21, D. H., pass. Jha.

(Endorsed :) 1874. Milwaukee, April 14. M. R. R. Comp. 14–14.

165 [J. H. Hall & Co., importers and commission agents.]

YEDO, JAPAN, *May 20th*, 1874.

Mess. IMHAUSER & Co.,
℅ 208 B'way, N. Y.:

GENTLEMEN: Yours of 30th of March is at hand, contents carefully noted. In reply will say, that your time detectors are entirely unknown in this country, but from our knowledge of the Japanese people should say they could be introduced.

The Japanese Government have colleges, medical, & other scientific institutions, city, town, & government public buildings in operation which are patroled by watchmen at night.

If you will ship us one as a sample we will take all of the necessary steps for a successful introduction.

163 [J. H. Hall & Co., importers and commission agents]

YEDO, JAPAN, , 187 .

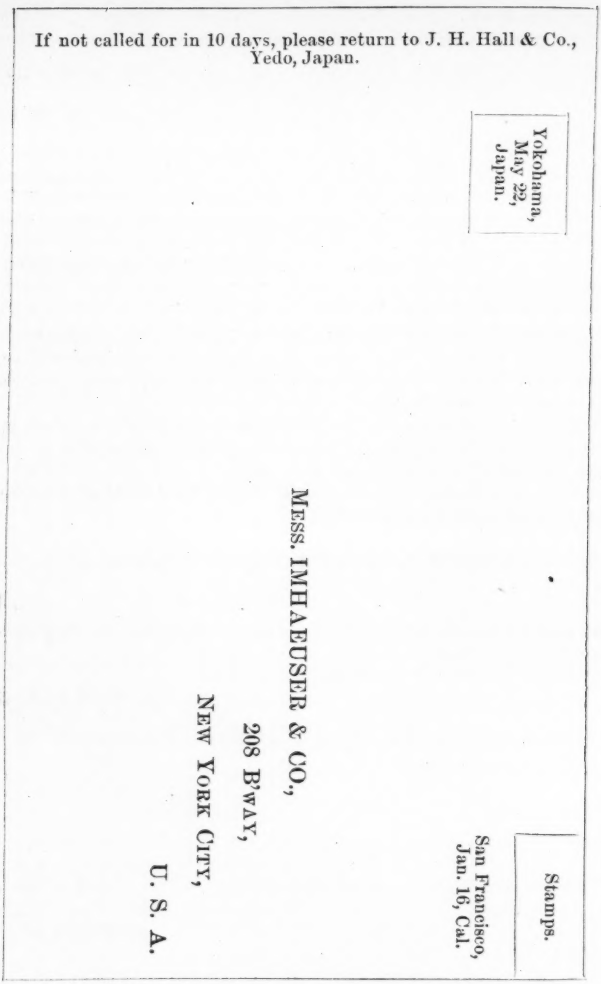
Please mark case H. & Co., Yedo, Japan. Hoping we may receive the instrument in due time,

We are, yours, very truly,

J. H. HALL & CO.

(Letter endorsed :) 1874. Japan, 20 May. Hall & Co. R., 22 Jan. 6 Oct.

Envelope.



167 [Mitchell, Cope & Co. J. H. Hall & Co., No. 55 Yokohama, importers and commission agents.]

YEDO, JAPAN, 9 *Nov.*, 1874.

Mess. IMHAEUSER & Co.,
New York:

DEAR SIRS: Your favor of 8 Oct'r is duly to hand. Mess. J. H. Hall & Co. have temporarily given up their business at Yedo, which will account for our writing you. We note that you have sent one of your detectors, & shall take delivery of same to-morrow, & by next st. will write you as to the probability of being able to introduce them among the Japanese.

Will you kindly send us full price-list & specimens by return st., so we may be well posted?

Yours,

MITCHELL, COPE & CO.

(Endorsed:) 1874. Mitchell, Cope Co. Yedo, 9 Nov. 26. 14.

168 MITCHELL, COPE & CO., 55 YOKOHAMA,
20th Nov'r, 1874.

Mess. IMHAEUSER & CO.,
New York:

DEAR SIRS: Since our last we are in due receipt of your time detector. We cannot write very hopefully about the prospect of introducing this to the Japanese, as there is really no use for such an invention in this country. We will, however, submit it to the head of railway department, where they might have some use for it, & advise you of the result.

Yours, truly,

MITCHELL, COPE & CO.

(Endorsed:) 1874. Yokohama, 20 Nov. Mitchell, Cope & Co. R. 24.

169 [Entry number. Customs, Canada. V. R. Jan. 12, 1875. Clifton. No. 162.]

CUSTOM-HOUSE, PORT OF CLIFTON,
12 *Jan'y*, 1875.

Permit W. Imhaeuser to pass to Canada by railroad, having reported and entered at this office the following goods, viz, one p'k'ge (7) watchman's clocks for W. Imhaeuser, the duties thereon being duly secured according to law.

W. LEGGETT, *Collector.*

To all officers of Her Majesty's revenue.

170 Circuit court of the United States, southern district of New York
In equity.

J. E. BUERCK
vs.
W. IMHAEUSER ET AL.

William Imhaeuser, being duly sworn, deposes and says:

I am one of the defendants in the above-mentioned suit, and have read the affidavits of J. Van Santvoord and Francis E. Forbes, dated March 18th, 1875.

I have sole charge of the business of the defendants' firm of Imhaeuser and Company, being the only member thereof that resides in the United States. I have been particularly careful to obey the injunction in this cause which was served on me July 8th, 1874.

The six time detectors which I sent to Milwaukee, and to which I made reference in my testimony before the master, K. G. White, esq., in December, 1874, are respectively numbered as follows: 2714, 2717,
171 2718, 2721, 2722, and 2723. They are amongst the number which appear on Exhibit Q as still on hand on December 16th, 1874, and which the final report of the said master, dated February 19th, 1875, declared to have been still in my possession December 16th, 1874, to which report no exception was taken by complainant. The number 2715 is a mistake on Exhibit Q; it should be 2718. These six clocks were

ordered from me April 14th, 1874, prior to the injunction, and the order was then accepted by me, as appears from the accompanying despatch, marked Schedule Wason, and from the letter marked Schedule Imhaeuser A, on page 28 of my letter-book, herewith submitted. The said six clocks were ordered by me from Europe as soon as the the order was received by me, and after they arrived I sent them, November 14th, 1874, to Milwaukee, but without dials, under the honest belief that I might do so, as the complainant's patent claims only the combination of his clock with the dials.

This action I was subsequently informed by my counsel was not correct, in view of the injunction, and might be made use of by com-
172 plainant, and to injure me in the eyes of the court; and immediately on learning this I wrote to said Wason and informed him of the fact and requested him to retain said clocks as part of my stock (he being the purchasing agent of the Chicago, Milwaukee and Saint Paul Railroad Company), as appears by my letters marked Schedule Imhaeuser B, on pages 647 and 654 of my letter-press book.

In his reply, Mr. Slocum, the general purchasing agent of said road, agreed to my request, as appears from his letter, Exhibit Slocum. The said clocks have since been returned to my address and I have placed them in possession of my counsel, Mr. A. V. Briesen.

I am dealing in other time-detectors, which are not an infringement of complainant's patent, and were distinctly exempted from the charge of infringement by complainant's counsel in his printed brief. Of these, I promised in letters, Schedule B, to send to Mr. Wason six in exchange for the six in question, and they have been sent him in exchange for the six he returned.

173 In all respects I am and have ever been careful to obey the injunction. I have refused a large number of orders for the Hahn-Meyer clocks here in controversy, as appears from pages 407, 441, 460, 495, 531, 539, 586, 641, and 755 of my press-copy book.

In stating to the master that I sold one clock to go to Japan I used a wrong expression. I never sold one, but only sent one which was called for as a sample, as appears from the letters of J. H. Hall & Company and of Mitchell, Cope and Company hereto attached, and as a sample it was sent; as appears also from my letters on pages 172, 502, and 646 of my press-copy book it was never sold, and is now in Japan at my disposal. I never received money for it. It is still ours. I had not the watch here when Mr. Hall ordered it. I wrote for it, to our house in Stuttgart, Germany, and it was shipped from there to Japan via New York. Mr. Theodore Hahn, the other defendant herein, resides in Germany, where our time-detectors are manufactured. All orders from foreign countries are filled by him from Germany, owing to difference in duties and expenses. I did not think it a violation of the injunc-
174 tion to send a sample clock to Japan with the intention of supplying orders to that country from Germany.

After the injunction was served I visited Canada in person, to which country I took 7 of the infringing clocks, as appears from the enclosed custom-house receipt, and sold them there.

Thus it is that, including the six Milwaukee clocks, I still have on hand twenty-one of the infringing time-detectors of the 28 mentioned on hand on Exhibit Q, Dec. 16th, 1874.

The dials which I have sold after the injunction were sold by me only to owners of those infringing clocks and for use thereon, for which I have rendered an account before the master. This I have done under advice of my counsel, Mr. Keller and Mr. Briesen, on the ground that

after I satisfy the complainant's claim as infringer of his patent on the clock I clear each clock sold and have the right to use it; and because the dials are not patented but necessary to the use of said clocks.

I will ever obey every order of this hon. court, and have been
175 particularly anxious to obey the injunction. I admit that I have sold watchman's time-detectors like the one sold to J. F. Gould, but the same are not involved in the suit of Buerck vs. Imhaeuser et al., and differ from those described in said suit by having no paper dial nor any index like that described in plaintiff's patent. These clocks are made under patent granted to A. Meyer October 20th, 1874, which patent distinctly describes the importance of omitting the paper dial. The clocks made under said patent of October 20th, 1874, have never been proved infringements of plaintiff's patent and not described in plaintiff's patent nor in the injunction. I sold them under the assurance of my counsel that the plaintiff must first prove them an infringement of his patent before he can enjoin their sale.

WILLIAM IMHAEUSER.

Sworn to before me this 16th day of Oct., 1875.

JOHN A. SHIELDS,
U. S. Commissioner S. D. of N. Y.

(Endorsed:) United States circuit court, southern district of
176 New York. J. E. Buerck vs. W. Imhaeuser et al. In equity. Affidavit of W. Imhaeuser.

177 Circuit court of the United States, southern district of New York. In equity.

JACOB E. BUERK
vs.
WILLIAM IMHAEUSER, THEODORE HAHN, AND Charles Keniath.

To Charles F. Blake, esq., solicitor for def'ts Imhaeuser & Hahn, and A. V. Briesen, esq., their counsel, and to Charles Keinath and William Imhaeuser:

Please take notice that I shall move this court at a circuit court appointed to be held in and for the said southern district, at the court room in the city of New York, on the third Monday of October, 1875, at the opening of the court on that day, or as soon thereafter as counsel can be heard, for an attachment against the defendant William Imhaeuser, to bring him before the court to answer for his contempt of this court by violating the injunction granted in this cause by selling watchman's time-detectors and accompanying paper dials, forbidden by said injunction, or that said defendant William Imhaeuser be and stand committed to the county jail of the city and county of New York,
178 and that the infringing watchman's time-detectors and also the paper-dials pertaining to or accompanying the same now in the possession of said Imhaeuser, or in the possession of any others of the said defendants, their agents or servants, be delivered up to the complainant, and for such other and further order or relief in the premises as to the court may seem meet, and that I shall use and read at the hearing of said motion, in support thereof, the pleadings, proofs, and papers filed in this cause, and also the injunction and proof of service thereof, and the affidavits, exhibits, and papers, copies whereof were

served upon you, the said Imhaeuser, on March 18, 1875, and on Charles F. Blake, esq., surviving solicitor for said Imhaeuser and Hahn, March 19, 1875, and June 2, 1875, together with the notices of March 18, 1875, and May 29, 1875, served with said papers.

September 29, 1875.

Res'y,

J. VAN SANTVOORD,
Compl't's Sol'r.

(Endorsed:) Circuit court U. S., S. D. of N. Y. Jacob E.
179 Buerk vs. William Imhaeuser et al. Notice of attachment for contempt. J. Van Santvoord, complt. sol'r.

Due service of a copy of within notice is hereby admitted.
New York, Oct. 6th, 1875.

A. V. BRIESEN,
Of Counsel for Def'd't.

180 Circuit court of the United States, southern district of New York. In equity.

JACOB E. BUERK
vs.
WILLIAM IMHAEUSER, THEODORE HAHN, AND Charles Keniath.

CITY AND COUNTY OF NEW YORK, *ss:*

Rob't E. Miller, being duly sworn, deposes and says that on the 6th day of October, 1875, at No. 45 New street, in the city of New York, he served a notice, of which the annexed notice is a copy, on Charles Keinath, one of the defendants in the above-entitled action, by giving and leaving the same with him personally. Deponent further says that on the same day, October 6th, 1875, he also served a like notice on William Imhaeuser, another one of the defendants in the above-entitled action, at his office, corner of Fulton street and Broadway, in said city of New York, by giving and leaving the same with him personally. De-
181 ponent further says that on the same day, to wit, the said 6th day of October, 1875, he served a like notice on Charles F. Blake, esq., solicitor for the defendants Imhaeuser and Hahn, in the aforesaid entitled action, by giving and leaving the same with a clerk in charge of said Blake's office, at No. 16 Murray street, in said city of New York.

ROBT. E. MILLER.

Sworn to before me this 9th day of October, A. D. 1875.

THOMAS F. McGOWAN (22),
Notary Public New York City & County.

Resworn to before me this 18 Oct., 1875.

R. E. STILWELL,
U. S. Comm'r.

(Endorsed:) Buerk vs. Imhaeuser & al. Notice of motion for attach't for contempt of injunction (3d Mon. Oct., '75). J. Van Santvoord, compl't's sol'r.

It is hereby stipulated that the motion within referred to may be made before Hon. A. S. Johnson, circuit judge, at the circuit court to be held

by him Nov. 10, 1875, at the court room, New York, at the opening of the court, or as soon thereafter as counsel can be heard.

182 N. Y., Nov. 2, 1875.

A. V. BRIESEN.
CHARLES F. BLAKE,
Def's' Solicitor.

183 FRIDAY, *November 12th*, 1875.

The court meets pursuant to adjournment and is opened by proclamation.

Present, Judge Johnson.

JACOB E. BUERK
vs.
WILLIAM IMHAUSER ET AL.

A motion for an attachment in the above cause for a contempt of court in violating an injunction heretofore granted, coming on to be heard, Mr. John Van Santvoord is heard in favor. Mr. A. V. Briesen is heard in opposition. Mr. Van Santvoord closes.

Curia advisari vult.

184 In the same suit.

A motion for a rehearing in the above cause coming to be heard, Mr. A. V. Briesen is heard in favor. Mr. J. Van Santvoord in reply and in opposition. Mr. Briesen closes.

Curia advisari vult.

185 U. S. circuit court, so. dist. of N. Y.

J. Van Santvoord, for pl'ff.

JACOB E. BURKE
vs.
WILLIAM IMHAEUSER, THEODORE HAHN & Charles Keinath.

A. V. Briesen, for def'ts.

JOHNSON, *Cir. J.:*

The watchman's time detector bought by Gould in May, 1875, from Imhaeuser & Co., was not the same kind of instrument which was adjudged in this suit to be an infringement of the plaintiff's patent; it was made under the sanction of letters patent of the United States, dated Oct. 20, 1874, & numbered 156093; it must be presumed to be patentably different from the detectors covered by other patents, and a strong and obvious case of infringement beyond all question, or mere colorable difference, would be necessary to make it proper for the court to consider the instrument as covered by a decree in another suit, in which its structure had not been in issue nor the subject of examination. (Liddle vs. Cory, 7 Blatchf., 1.) The motion cannot be

186 granted so far as that branch of it is concerned.

In regard to the six detectors sent to the Milwaukee Railroad, there was undoubtedly a technical breach of the injunction, but the de-

fendant Imhaeuser, as soon as he was advised by his counsel, took steps to have them returned. This was before his examination under the decree & of course before any proceeding by the plaintiff, who was ignorant of the fact until it was disclosed on Imhaeuser's examination. These watches are reported by the master as among those on hand at the time of the accounting, and it appears that they have been actually returned and the sale rescinded. The defendant will be sufficiently punished by the infliction of a fine of fifty dollars to cover the costs and expenses incurred by the plaintiff in his proceedings for the contempt.

In regard to the paper dials which the defendants' appear to have furnished for the detectors which they had sold before the accounting, and for which clocks they are charged in the accounting. I
187 think no new infringement has taken place. The dials are not patented; any one can print and sell them, and the sale of them can only be injurious to the rights of the plaintiff as making out, coupled with the sale of the rest of the instrument, an act of infringement. It was in this view that Wallace vs. Holmes, 9 Blatch., 66, was decided, in which it was held that a patent for a combination could not be evaded by different persons selling each a different part of the combination with the view of their being used together by the purchasers. In this case the whole sale of detectors and dial made one infringement, not two, and for this the defendants are charged in the accounting. These charges of contempt are all that are relied on in the plaintiff's brief, and nothing is made out except as to the six detectors sent to the Milwaukee Railroad.

The motion in that regard must be granted, unless the defendant pays to the plaintiff's solicitor the fine above mentioned, but upon the payment of that sum within ten days from notice of this order the order for attachment is discharged.

188 (Endorsed:) U. S. cir. court. Buerk vs. Imhaeuser et al. Opinion on mo. for attachment. Johnson, cir. J. Filed Nov. 11, 1876.

189 At a stated term of the circuit court of the United States of America for the southern district of New York, in the second circuit, held at the United States court-room in the city of New York, on the day of November, 1876.

Present, the Hon. Alexander S. Johnson, circuit judge.

JACOB E. BUERK
vs.
WILLIAM IMHAEUSER, THEODOR HAHN AND Charles Keinath.

This court having passed a decree enjoining the defendants from further infringement of the complainant's patent No. 48048 for an improvement in watchman's time detector, on which this suit was brought, and an injunction having been issued in pursuance of said decree, and the same having been returned and the return filed, and it appearing therefrom that the said injunction was duly served on the defendant William Imhaeuser, which injunction commanded and enjoined the said defendants and each of them forthwith to desist
190 from making, manufacturing, using or selling, or in any manner disposing of any watchman's time detector, or any other article, in violation of said letters patent, upon reading and filing notice of

motion for an attachment against the said William Imhaeuser, one of the said defendants, to compel him to appear and answer for the contempt of said injunction, and upon reading and filing the affidavits and papers accompanying said notice and proof of service thereof, and affidavits read in opposition thereto, and it appearing therefrom that said injunction was duly served upon the said William Imhaeuser, and that he the said William Imhaeuser, has, since the service of the said injunction upon him, sold in the United States sundry watchman's time detectors containing and using the said patented improvement, and which were infringements of the said patent, and after hearing J. Van Santvoord for the motion, and A. V. Briesen, esq., counsel for the said defendants, in opposition:

Now, therefore, upon consideration thereof, it is hereby ordered, adjudged, and decreed, that the aforesaid selling of said infringing watchman's time detectors by said William Imhaeuser is a contempt of this court and a violation of the said injunction; and it is hereby further
191 ordered, adjudged, and decreed, that the said William Imhaeuser pay as a fine for the said contempt the sum of fifty dollars, which sum shall go to the complainant towards paying his costs and expenses incurred in his proceedings for said contempt, and that the said defendant, William Imhaeuser, pay to the complainant's solicitor, J. Van Santvoord, said sum of fifty dollars within ten days after service of a copy of this order on defendants' counsel, A. V. Briesen, esq., and that in default of such payment, to be shown by affidavits filed, an attachment issue against the said defendant, William Imhaeuser, and he be taken into custody by the marshall and committed to the county jail of the city and county of New York for said contempt until the further order of this court.

192 (Indorsed:) U. S. cir. court, S. D. of N. Y. J. Buerk vs. Wm. Imhaeuser et al. Order of attachment for contempt of injunction. J. Van Santvoord, compl't's sol'r.

Enter as amended.

ALEX. S. JOHNSON, *Cir. J.*

Eq. No. 5, p. 452. Filed Nov. 17th, 1876.

193 United States circuit court, southern district of New York.

JACOB E. BUERCK
vs.
WILLIAM IMHAEUSER, THEODORE HAHN, AND Charles Keinath.

Present, Hon. A. S. Johnson, circuit judge.

The order for an attachment in this cause is hereby amended by adding thereto the following, to wit:

"And it is further ordered that the motion for an attachment against the defendant Imhaeuser for the sale of a watchman's time detector under letters patent No. 156098 granted to A. Meyer October 20th, 1874, is denied."

Enter.

ALEX. S. JOHNSON.

(Endorsed:) U. S. circuit court, southern district of New York.
194 J. E. Buerck vs. W. Imhaeuser et al. In equity. Amendment to order for attachment. E. D. No. 5, p. 452. A. V. Briesen, of counsel for def'ts, 258 Broadway, N. Y. Filed Dec. 14, 1876.

195 Circuit court of the United States, southern district of New York.
In equity.

JACOB E. BUERCK
vs.
WILLIAM IMHAEUSER, THEODORE HAHN, AND Charles Keinath.

Please take notice that on Monday, the 15th day of March, 1875, at 11 o'clock in the forenoon, or as soon thereafter as counsel can be heard, a motion will be made before the judges of this hon. court, at the court-room, No. 27 Chalmers street, New York city, that the proceedings under the interlocutory decree in this suit be stayed, and that the defendants be granted permission to amend their answer in this cause, and to take further testimony herein, and that in support of said motion the affidavits of which true copies are herewith served on you and the pleadings and proofs on file in this cause will be read. The Exhibits No. 1, 2, and Imhaeuser, referred to in the accompanying affidavits, will be at my
196 office, 258 Broadway, until the motion is heard, and you are invited to examine the same. The proposed amendment to the answer is also served herewith.

Very respectfully,

A. V. BRIESEN,
Of Counsel for Def'ts Imhaeuser & Hahn.

NEW YORK, *March* 10, 1875.

(Endorsed:) United States circuit court, southern district of New York. J. E. Buerck vs. Wm. Imhaeuser, Th. Hahn, & Chas. Keinath. In equity. Notice of motion.

Rec'd March 10, 1875, a notice of which the within is a copy, and copies of proposed amendment to answer & of affid'ts of W. B. Barnes, E. Manrass, H. A. Warner, G. M. Harrell, J. B. Beadle, G. M. Harrill, J. C. Lewis, G. R. Curtis, G. R. Curtis, W. A. Barnes, W. Imhaeuser, D. C. Brevoort.

J. VAN SANTVOORD,
Compl't's Sol'r.

97 (Copy.)

Circuit court of the U. S., southern district of N. Y. In equity.

J. E. BUERCK
vs.
WM. IMHAEUSER ET AL.

It is proposed to amend the answer of the defendants Imhaeuser and Hahn herein as follows, by inserting therein the following:

"And these defendants, further answering, say that they are informed and believe that the complainant has unjustly obtained the patent described in his bill of complaint for that which was in fact invented by one William B. Barnes, who was using reasonable diligence in adapting and perfecting the same; but finally, and before the date of complainant's alleged invention, abandoned the same to the public; that the said complainant was not the original and first inventor or discoverer of any material or substantial part of the thing patented, as set forth in the bill of

complaint, and that the time director patented by the complain-
198 ant had been in public use or on sale in this country for more than two years before his application for a patent, and that the said invention having been abandoned to the public by said Wm. B. Barnes, these defendants have, and ever since said abandonment have had, a perfect right to use the invention which said Barnes has abandoned to the public prior to the date of the alleged invention of the complainant.

"And these defendants, further answering, say that they are informed and believe that the following named persons had knowledge of the public use and sale in this country of the watchman's time detector described in the complainant's letters patent more than two years prior to the application by the complainant for his letters patent and of the abandonment of said invention to the public by said William B. Barnes, to wit: William A. Barnes, now of Meriden, Conn.; William
B. Barnes, now of Meriden, Conn.; Hobart A. Warner, now of
199 Bristol, Conn.; Elijah Manross, now of Bristol, Conn.; Geo. M. Howell, now of Meriden, Conn.; Isaac C. Lewis, now of Meriden, Conn., and others whose names are not now known to these defendants, but which they crave permission to disclose as soon as ascertained."

(Signed) WILLIAM IMHAEUSER.

UNITED STATES OF AMERICA,

Southern District of N. Y., ss:

William Imhaeuser, being duly sworn, deposes and says that he is one of the defendants named in the foregoing amended answer subscribed by him, that he has read the foregoing amendment to the answer, and that he verily believes it to be true.

(Signed) WILLIAM IMHAEUSER.

Subscribed and sworn to before me this tenth day of March, 1875.

(Signed) R. E. STILLWELL,
U. S. Com.

200 (Indorsed:) Copy. U. S. circuit court, southern dist. of N. Y. J. E. Buerck vs. Wm. Imhaeuser et al. In equity. Amendment to answer.

201 (Copy.)

William Bainbridge Barnes, being duly sworn, deposes and says:

I reside in Meriden, county of New Haven, State of Connecticut; was born in the United States, and am fifty-four years of age. I was in the employ of Manross Bros., at Forrestville, in the town of Bristol, county of Hartford, State of Connecticut, from the summer of 1856 to the fall of 1863, and did not work for them after 1863. I designed and made the watchman's clock, which is hereto attached, and named No. 1, in the latter part of 1862, and sold it to the Meriden Cutlery Co., receiving the pay for it in January, 1864, that is to say, I delivered it to said Meriden Cutlery Co. in the year 1862, no later than January, 1863, and it was taken by said Co. on condition that they were to test its utility before paying for it, and not to pay for it until they should find it to be useful for the purpose for which it was intended. The said co. then used said clock, and, finding it useful, paid for it in January, 1864. The said clock as made by me in 1862, and used by the Meriden Cutlery Co., was provided with six spring points, now within it, and with eleven keys, the ten now attached to it, and one

which is now lost; each of six of said keys serving to affect one
202 spring point and each of the remaining five keys serving to affect more than one spring point. The springs were depressed by the keys to pierce or mark the rotary paper dial. I went to work for Laporte Hubbell in February, 1864, worked for him until August, 1865, and commenced work on two clocks of equal construction, and of which one, named No. 2, is hereto attached, in the lat'er part of 1864, and finished No. 2 and sold it to the Meriden Britannia Co., in the town of Meriden, county of New Haven, State of Connecticut, receiving my pay in January, 1865. After I had sold clock No. 2 I finished a third clock just like No. 2, sold it to George W. Brown & Co., of Forestville, town of Bristol, county of Hartford, State of Connecticut, in August, 1865, receiving pay for it in September, 1865. I have been very much impressed ever since 1862 with the utility and value of said clocks, and was very anxious to engage in manufacturing the same, but did not, for two reasons, viz:

I failed to secure the services of a Mr. Thompson, of New Haven, as salesman, and I had not sufficient capital.

(Signed) WILLIAM BAINBRIDGE BARNES.

Signed in presence of—
FRANK G. OTIS.

203 MERIDEN, *Jan. 25th*, 1875.

NEW HAVEN CO., *ss:*

Personally appeared Wm. Bainbridge Barnes, signer & sealer of the foregoing instrument, and acknowledged the same to be true to the best of his knowledge & belief.

Before me—
[L. S.] FRANK G. OTIS,
Notary Public.

204 (Indorsed:) Copy. Affidavit Wm. B. Barnes.

205 (Copy.)

This is to certify that William B. Barnes was in the employ of the firm of Manross Bros. (of which firm I was an active partner, and now am the only surviving member) from the year 1858 to the latter part of the year 1863, and not after December 31st, 1853, and that he made this clock No. 1 during the time he was employed by said company.

(Signed) ELIJAH MANROSS.

BRISTOL, CONN., *Jan. 12th*, 1875.

Personally appeared before me Elijah Manross, signer of the foregoing certificate, and made oath that statements contained in said certificate by him signed are true and correct.

[L. S.] (Signed) DAN. A. MILLER,
Notary Public.

206 (Indorsed:) Copy. Affidavit Elijah Manross.

207 (Copy.)

This is to certify that I was in the employ of Manross Bros., of Bris-

tol, Conn., village of Forestville, as foremen and time-keeper, from the year 1860 to 1862; that William B. Barnes was in the employ of said Manross Bros. from as early as 1860 to October, 1863, as appears on time-books still in my possession; that said Wm. B. Barnes ceased to work for said Manross Bros. in October, 1863; that during this time I know him to have been working upon and making a watchman's time detector similar in appearance to the one attached to this paper, and I should judge and believe it from its appearance to be the same one hereto attached.

Dated at Bristol this twelfth day of January, A. D. 1875.

(Signed) HOBART A. WARNER.

STATE OF CONNECTICUT,
County of Hartford:

BRISTOL, *January 12th*, 1875.

Personally appeared Hobart A. Warner, to me known, signer of the foregoing instrument, and took oath to the truth of the same before me.

[L. s.] (Signed) MILES L. PECK,
Notary Public.

208 (Indorsed:) Copy. Affidavit Hobart A. Warner.

209 (Copy.)

This is to certify that I, Geo. M. Howell, reside at Meriden, in New Haven County and State of Connecticut; that the watchman's time-detector attached to this paper and known as number one was purchased by the Meriden Cutlery Company, a joint stock corporation of said Meriden, some time previous to January, 1864, of William B. Barnes, then residing in Forestville, Conn., and now a resident of said Meriden; that said Meriden Cutlery Company paid the said William B. Barnes, on the 18th day of January, 1864, the sum of forty dollars as the purchase price for said watchman's time detector; that said Meriden Cutlery Company used said watchman's time detector for a period of more than five years, commencing prior to January, 1864, and for more than five years thereafter, and that the dial cards attached to this instrument were used in the said watchman's time detector known as number one on the nights of the days as are found written on each card attached to this instrument, and that said dial cards were used at the time designated on each of them at the shops of said Meriden Cutlery Company.

Dated at Meriden, Jan. 13, 1875.

(Signed) GEO. M. HOWELL.

STATE OF CONNECTICUT,
New Haven County:

MERIDEN, *Jan.* 13, 1875.

210 Personally appeared Geo. M. Howell, to me personally known, signer of the foregoing instrument, and made solemn oath to the truth of the same.

Before me.

(Signed) BENJ. PAGE, JR.,
Notary Public.

(Indorsed:) Copy. Affidavit Geo. M. Howell.

211 (Copy.)

STATE OF NEW YORK,
City & County of New York, ss :

J. B. Beadle, of Montclair, in the county of Essex, and State of New Jersey, being duly sworn, deposes and says, that he is the secretary and treasurer of the Meriden Cutlery Company, a joint stock corporation of Meriden, New Haven County, Connecticut, and that he has been connected with said company ever since the year 1855; that he knows George M. Howell, of Meriden, Connecticut, who subscribed the affidavit before Benj. Page, jr., notary public, hereto attached, and has known said Howell to be connected with said Meriden Cutlery Company ever since about the year 1858; the said Howell, in 1864, and also in 1863, was in the employ of the said Meriden Cutlery Company, and is at present manufacturing agent of said company.

(Signed) J. B. BEADLE.

Subscribed and sworn to before me this 4th day of March, 1875.

[L. S.] ERNEST C. WEBB (4),
Notary Public N. Y. County.

212 (Indorsed :) Copy. Affidavit J. B. Beadle.

213 (Copy.)

George M. Howell, of Meriden, New Haven County, Conn., being duly sworn, deposes and says, that he is the manufacturing agent of the Meriden Cutlery Company of Meriden, Conn., and has charge of the books of said company; that he has searched in said books for entries relative to the purchase of a watchman's time detector from W. B. Barnes in the year 1864, and found the following entries, of which the subjoined is a true & exact copy, to wit, in the cash book No. 2, on page 307, under date of Jan'y 18th, 1864, the following entry :

Expense acct. paid for watch, forty dollars.

(Signed) GEO. M. HOWELL,
M'f'g Agent of Meriden Cutlery Co.

Subscribed and sworn to at West Meriden, New Haven County, Conn., this 8th day of March, A. D. 1875.

[L. S.] (Signed) A. L. OTIS,
Notary Public.

214 (Endorsed :) U. S. circuit court, southern district of N. Y. J. E. Buerk vs. Wm. Imhauser & al. In equity. Affidavit of G. M. Howell.

215 (Copy.)

STATE OF CONNECTICUT,
New Haven County, ss :

MERIDEN, *Jan'y* 14, 1875.

I, Isaac C. Lewis, of Meriden, county of New Haven and State of Connecticut, being duly cautioned and sworn, on oath say that I am the general superintendant of the Meriden Britannia Company, a corporation chartered by the legislature of the State of Connecticut, and located at Meriden aforesaid; that on the 9th day of January, A. D. 1865, I purchased on behalf of said company, of William B. Barnes, then of Bristol, in the State of Connecticut, and now of Meriden above mentioned, a cer-

tain watchman's time detector manufactured by said Barnes, for which I agreed to pay on behalf of said company the sum of fifty dollars, which sum was, on said 9th day of January, 1865, paid to said Barnes by the treasurer of said company in satisfaction of and as payment for said watchman's time detector hereto attached; and I further depose and say that said detector so purchased as aforesaid has ever since been and still is in use by said company for the purposes for which it was designed; and I further depose and say that said detector was in the possession
216 and use of said co. for a period of several weeks before it was purchased for the purpose of trial with a view of purchasing the same.

(Signed) ISAAC C. LEWIS,
Gen. Supt. of Meriden Britannia Co.

STATE OF CONNECTICUT,
New Haven County, ss:

MERIDEN, *Jan'y* 14, 1875.

Personally appeared Isaac C. Lewis, gen'l superintendant of the Meriden Britannia Company above mentioned, and signer of the foregoing affidavit, and made solemn oath to the truth of the same.

Before me,
[L. S.] GEORGE A. FAY,
Notary Public for Conn.

(Indorsed:) Copy. Affidavit Isaac C. Lewis.

217 STATE OF CONNECTICUT,
New Haven County, ss:

MERIDEN, *Jan'y* 14, 1875.

I, George R. Curtis, of Meriden, county of New Haven and State of Connecticut, on oath say, that I at present am, and on the 9th day of January, 1865, was treasurer of the Meriden Britannia Company, a corporation chartered by the legislature of the State of Connecticut, and located at Meriden above mentioned; that on said 9th day of January, 1865, the said Meriden Britannia Company purchased of one William B. Barnes, then of Bristol, in said State of Connecticut, and now of Meriden aforesaid, a certain watchman's time detector, manufactured by said Barnes, for the sum of fifty dollars, which said sum I, as treasurer of said company, on said 9th day of January, 1865, paid to said Barnes in satisfaction of and payment for said detector.

(Signed) GEO. R. CURTIS,
Treasurer Meriden Brit'a. Co.

STATE OF CONNECTICUT.
New Haven County, ss:

MERIDEN, *Jan'y* 14, 1875.

218 Personally appeared George R. Curtis, treas. of Meriden Britannia Company aforesaid, and signer of the foregoing affidavit, and made solemn oath to the truth of the same.

Before me
[L. S.] GEORGE A. FAY,
Notary Public for Conn.

(Indorsed:) Copy. Affidavit Geo. R. Curtis.

219 (Copy.)

Geo. R. Curtis, of Meriden, New Haven County, Conn., being duly sworn, deposes & says that he is the treasurer of the Meriden Britannia Company of Meriden, Conn., & has charge of the books of said company; that he has made a search of said books for entries relative to the purchase of a watch clock from W. B. Barnes, in the year 1865, and finds the following entries, January 9th, 1865: "Cash for watch clock of W. B. Barnes, $50," and that the same was paid by check # 813 on the Home Bank of West Meriden, Conn., and that the same appears in cash book G G, page 10.

(Signed) GEO. R. CURTIS,
Treasurer of Meriden Brit'a Co.

Subscribed and sworn to at West Meriden, New Haven County, C't, this 8th day of March, A. D. 1875.

[L. S.] (Signed) FRANK G. OTIS,
Notary Public.

220 (Indorsed:) Copy. Affidavit George R. Curtis.

221 STATE OF NEW YORK,
County of New York, ss:

WILLIAM A. BARNES, being duly sworn, deposes and says:

I am the son of William B. Barnes, of Meriden, Connecticut, who has signed the affidavit attached to the watchman's time detectors No. 1 & 2. I worked for the Meriden Cutlery Company about three months of the year 1863, commencing in January, worked at making tools for them, as they were hurried at the time. I saw the detector No. 1 in use by the watchman of said company during the time I was there, he making his regular rounds carrying the detector by a strap around his neck and making use of the keys which were attached to the shop in different places or stations. After working there I went to Whitneyville, Connecticut, and worked in the armory at that place during the summer of 1853, till some time in August of same year, after which I went to Forestville, Connecticut, working for myself till in the following win-

222 ter; my health being rather poor, I did no regular work for some time or until the next fall, doing the same kind of work which I did the fall before. When this was through I took a detector made like No. 2, and which was subsequently sold to George W. Brown & Co., and traveled with it under instructions from my father to sell the same and get orders for more; this was in either December 1864, or early in January, 1865, believe it to be the latter part of December, 1864; not succeeding in it, I returned. Some of the places visited were, Sargent's hardware shop in New Haven, New Haven Machine Co. on Whitney avenue, Davenport and Malory's, and Candee's rubber shop, all in New Haven; also at Whitney's armory at Whitneyville, also a few places in New Brittain.

I was not encouraged at these places, as I am not a good salesman, and as the parties approached by me had not been led to appreciate the importance of an instrument of that kind. At one place I was told

223 that the watchman was instructed to ring the bell, tolling the hours; they said that was enough to satisfy them; this was at Whitney's armory, in Whitneyville, Connecticut.

I heard of the suit of Buerck vs. Imhaeuser & Co. some time in May of 1874, and wrote to Mr. Imhaeuser immediately that I had important

information. I wrote another sometime in July or August, 1874; one of these letters was returned to me through the dead letter office. In December, 1874, Mr. Imhaeuser called to see me at Bridgeport, Connecticut, and requested me to come to New York with my father, and state what I did know to his attorney. We complied with the request, and were then instructed by Mr. A. V. Briesen to prepare our affidavits and those of the parties that had bought our clocks No. 1 & 2 with the greatest possible speed.

(Signed) WM. A. BARNES.

Subscribed and sworn to before me this 5th day of March, 1875.

[L. S.] ERNEST C. WEBB (4),
Notary Public N. Y. County.

224 (Endorsed:) U. S. circuit court, southern district of N. Y. J. E. Buerck. Wm. Imhaeuser, T. Hahn, and Charles Keinath. In equity. Affidavit of Wm. A. Barnes.

225 (Copy.)

Circuit court of the United States for the southern district of New York. In equity.

JACOB E. BUERCK
vs.
WILLIAM IMHAEUSER, THEODORE HAHN, AND Charles Keinath.

STATE OF NEW YORK,
County of New York, ss:

WILLIAM IMHAEUSR, being duly sworn, deposes and says that he is one of the defendants in the above-entitled cause, and a resident of Brooklyn, New York; that Theodore Hahn, in this cause, resides in Germany, and has not been in the United States during the last two years; and that Charles Keinath, the third defendant, has not put in an answer to the bill, and taken no part whatsoever in defending this suit, a decree having been taken against him by default. Deponent further says that the bill of complaint in this cause was filed about June 22nd, 1872, and that the first proofs herein were taken November 18th, 1872; that
226 the cause was brought to a hearing in the February term of the year 1874, and decided by his honor Judge Woodruff in favor of the complainant. The decretal order herein was dated the 27th day of June, 1874.

The deponent further says that about the beginning of December, 1874, while in Bridgeport, Connecticut, on a business trip, he first made the acquaintance of W. A. Barnes, the son of W. B. Barnes, whose affidavit is hereto attached, and was by said W. A. Barnes introduced to his father, W. B. Barnes. At that time, to wit, in December, 1874, the deponent first learned, through said Barnes, of the existence of clocks No. 1 & 2, attached to the affidavit of said W. B. Barnes, and of the efforts of said Barnes to make and introduce said clocks, and others like them. Immediately upon receiving said information, deponent instructed his counsel to inquire into the details thereof, who requested the said Barnes to prepare an affidavit relating the facts pointed
227 out by him, and to furnish the proofs by obtaining the affidavits of the officers of the company who had purchased the clocks. Deponent thereupon also purchased from the Meriden Cutlery Company

and from the Meriden Britannia Company the clocks Nos. 1 & 2 respectively.

The preparation of the affidavits, owing to the difficulty of finding the officers in question at leisure to search the books and give their affidavits, was tedious, and not until the 2nd day of March was deponent in condition to deliver to his counsel a sufficient number of affidavits to warrant him to make a motion for the introduction of new testimony.

(Signed) WILLIAM IMHAEUSER.

Subscribed and sworn to before me this 5th day of March, 1875.

[L. S.] ERNEST C. WEBB (4),
Notary Public, N. Y. County.

228 (Endorsed:) U. S. circuit court, southern district of N. Y. J. E. Buerck vs. William Imhauser, Theodore Hahn, & Charles Keinath. In equity. Affidavit of William Imhauser.

229 (Copy.)

United States circuit court, southern district of New York. In equity.

JACOB E. BUERCK
vs.
WILLIAM IMHAEUSER ET ALS.

UNITED STATES OF AMERICA,
City, County, and State of New York, ss:

HENRY L. BREVOORT, being duly sworn, says:

My age is 26 years; I reside in Brooklyn, New York; and I am in the habit of investigating patents and have given evidence in patent causes. I have for the past 6 years been employed in various cases involving steam machinery, as an expert, and have for the last year devoted myself to the experting of general patent causes. I have carefully examined the patent granted to John Buerck, assigned to J. E. Buerck, dated Jan. 1, 1861, also the patent granted to Jacob E. Buerck, dated June 6, 1865—both for watchman's time detectors. I have also examined a watchman's time detector, sold by Imhaeuser & Co.,
230 and marked Exh. Imhaeuser, patented July 25, 1871, as well as two exhibits, marked No. 1 and No. 2, both being watchman's time detectors, and said to have been constructed and used prior to the date of Buerck's patent of 1865, which is now in force, the first patent held by him by assignment having expired.

On comparing Exhibit No. 1 with Buerck's existing patent, and especially with the first claim of said patent, which covers the combination of a stationary index and spring points with a false revolving dial, I find that the same combination is substantially shown in the Exhibit No. 1, though from the difference of construction, or rather the difference in the disposition of the parts, the office of one of the elements may be dispensed with. Buerck's apparatus, as shown in his patent of 1865 and Exhibit No. 1, are both portable watchman's time detectors, operated by keys fastened at various stations to be visited by the
231 watchman in his beat. Both have attached to the arbor of a watch-movement a circular plate, which carries upon it a false paper dial, to receive impressions at various stations from the action of keys, which dial will revolve once in twelve hours. The paper dials in both cases have radial lines to indicate the hours and fractions of hours,

also concentric lines to indicate which of the series of points or markers was used in making the perforations.

In Exhibit No. 1 I find attached to the inside of the removable cover of the instrument a series of steel springs, each firmly held at one end, and having at the free end a point for piercing or marking the paper dial when the free end is moved by the keys towards said dial. I find a series of six spring piercers used in the Buerck patent; also six springs with points are found in Exh. No. 1. A series of keys are found with Exh. 1, some of which show projections so arranged as to operate upon more than one spring at a
232 time; thus, by the simultaneous action of a series of springs, a great number of keys can be provided, all of which will effect distinct and easily recognized marks upon the paper dial. Though I find a structural difference here between Exhibit No. 1 and Buerck's patent, I think that the devices can only be considered as equivalents.

In regard to the stationary index, which is an element of the combination of the first claim of Buerck's patent of 1865, I find in Exh. No. 1 a piece of wire which, attached to the case of the instrument at one end, has the other bent up at right angles, touching the edge of the revolving plate, which carries the false paper dial. This piece of wire might serve as a stationary index, though its position is not the correct one. The construction of Exh. No. 1 is such that the necessity of a stationary index, as shown by Buerck, is avoided; the key-hole of the case, or any of the stationary fixtures of the case, would serve to indicate the
233 proper place upon the revolving metal plate for the false dial.

If the piece of wire used in Exh. No. 1 is intended as a stationary index, or if any of the parts of the apparatus may be assumed to act as such, then I find all the elements described in the 1st claim of Buerck's pat. in Exh. No. 1, though I find a difference in the arrangement of the parts.

The spring points or markers in Buerck's patent act from beneath the paper, and pierce it from the under side, while the spring points in Exh. No. 1 act from above and pierce it from the upper side. In my opinion this difference is one of arrangement and not of combination. In Exhibit No. 2 I find a resemblance to the Imhaeuser exhibit from the fact that in both detectors the keys come directly in contact with the false paper dial, distinguishing these exhibits from Buerck's and Exh. No. 1, in which these keys do not touch the paper, and only act upon it through the instrumentality of the spring points. In Exh. No. 2 the keys
234 are provided with bits projecting from the barrel, which bits have sharpened ends, and which, after the key is inserted in the case and partially revolved, act directly upon the surface of the paper, making marks thereon, the position of the marks depending upon the position of the bit upon the barrel of the key. The points of the bits of the keys are, I find, so arranged that the mark of one key can be distinguished from the marks of another, thus enabling a large number of keys to be used. In Exhibit Imhaeuser, however, the key has a bit projecting from the barrel, but it is so arranged that it performs the marking operation by forcing the paper down upon rigid dies supported underneath the false paper dial. Thus, in Exhibit 2 and Exhibit Imhaeuser, the keys are introduced into the case of the detector, and both keys act above the paper of the false dial, and both keys perform their operation by pressure upon the paper, in both instances pressing the paper dial downward towards the clock movement. Provision is
235 made in both exhibits for resisting the upward pressure of the key when, by its partial revolution, it presses upon the paper. In

Exhibit Imhaeuser it is found in a projection attached to the case of the instrument, while in Exhibit No. 2 it is found in an arrangement of guides attached to the inside of the cover, which serve the further purpose of preventing the watchman from using a single key to produce all the marks upon the paper dial, which should be produced by the series of keys.

As a mechanical expert, it is my opinion that substantially the same combination is shown in Exhibits 1 & 2, as is found in Exhibit Imhaeuser.

(Signed) HENRY L. BREVOORT.

Sworn & subscribed to before me this 8th day of March, A. D. 1875.
[L. S.] (Signed) PHILLIPS ABBOTT,
Notary Public, New York County.

236, 237 (Endorsed:) U. S. circuit court, southern district of New York. J. E. Buerck vs. Wm. Imhauser & al. In equity. Affidavit of D. C. Brevoort.

238, 239 Circuit court of the United States, southern district of New York. In equity.

JACOB E. BUERK
ag't
WILLIAM IMHAEUSER, THEODORE HAHN, AND Charles Keinath.

CITY AND COUNTY OF NEW YORK,
Southern District of New York, ss:

A. Faber du Faur, being duly sworn, deposes and says that he resides at Newark, New Jersey, and that his business office is at No. 90 Broadway, New York; that during the last seven years he has been frequently examined as an expert in patent causes; that he was examined as expert in this cause during the taking of proofs therein for final hearing, and that he has examined and thinks he understands the invention described and claimed in complainant's letters patent No. 48048, on which this suit was brought; that he has carefully examined the watches, marked Exhibits No. 1 and No. 2, referred to in the affidavit of William Bainbridge Barnes, sworn to January 25, 1875, at New Haven
240 County, before Frank G. Otis, notary public, and deponent believes he fully understands their construction and operation; that in said Exhibit No. 1 there is no stationary index such as is described and claimed in complainant's said patent, nor any equivalent therefor; that in said Exhibit No. 1 the supporting disc upon which the paper dial rests is not mounted upon the arbor of the hour hand, as in complainant's patent, but it is placed on a stationary round pin, which pin is in line with the arbor of the watch, but independent thereof; said disc is revolved around said stationary pin by means of a pinion placed at one side in the watch, and this pinion works into a gear-wheel fastened to the inner side of the disc. This arrangement is readily seen by lifting the disc off the stationary pin. This disc is of larger diameter than the paper dial. The paper dial rests on a leather cushion, which is secured upon the outer side of the disc, and the spring points of said Exhibit No. 1 penetrate the paper and enter the leather cushion,
241 the said revolving disc, with its leather cushion or covering, always forming the support against which the spring points act in perforating the false or paper dial, while in complainant's patent the

stationary index forms the support against which complainant's spring points act, when perforating the false or paper dial, and that part of complainant's paper dial which has the divisions and receives the perforations projects beyond the revolving disc, and is not supported by it where the spring points act.

The spring points in said Exhibit No. 1 make their perforations from the ontside inwards, instead of from the inside outwards, as claimed in complainant's second claim.

Deponent further states that comparing the elements specified in the first claim of complainant's patent with said Exhibit No. 1 he finds that in said Exhibit No. 1 the combination there shown of a paper or false dial and spring points is materially different in construction and operation from the same elements in complainant's patent, and
242 further that said Exhibit No. 1 has no stationary index constructed and operating as described and shown in said patent and claimed in said first claim.

Deponent further states that the said Exhibit No. 2 is constructed and arranged substantially like Exhibit No. 1, with the exception that it does not contain spring points for operating on the false or paper dial, but instead of spring points keys with bits are used for making indentations on the paper dial, the keys being introduced into the key hole and partially turned so as to force the paper against the leather-covered disc and make an indentation in the paper, the key being then turned backward and withdrawn.

Deponent says that neither of said exhibits contain or use the invention specified in the claim of complainant's patent.

A. FABER DU FAUR.

Subscribed and sworn to before me this 13th March, 1875.

[L. S.] W. HAUFF (146),
Notary Public, N. Y. City and County.

Resworn to before me this 30 March, 1875.

R. E. STILWELL,
U. S. Comm'r.

243 (Endorsed:) U. S. circuit court S. D. of New York. Jacob E. Buerck vs. William Imhaeuser et al. Affidavit of A. Faber du Faur. J. Van Santvoord, sol'r for compl't.

244 Circuit court of the United States, southern district of New York.
In equity.

JACOB E. BUERK
ag't
WILLIAM IMHAEUSER, THEODORE HAHN, and Charles Keinath.

CITY AND COUNTY OF NEW YORK,
Southern District of New York, ss:

John Van Santvoord being duly sworn deposes and says that he is the solicitor for the complainant in this action; that Mess' Keller and Blake appeared as solicitors for the defendants Imhaeuser and Hahn, and Mr. James Eschevege appeared for Keinath. That so far as deponent is informed or believes, there has never been any change of solicitors for either of said defendants, except by the death of Mr. Keller. That A. V. Briesen, esq., has appeared and acted as counsel for Im-

haeuser and Hahn, in the accounting before the master, Kenneth G. White, esq., under the decretal order herein of June 27, 1874. That the bill of complaint was taken as confessed November 9, 1872, against said Keinath for want of an answer. That the answer of defend-
245 ants Imhaeuser & Hahn was filed September 10, 1872, and that said answer was twice amended for the purpose of adding new defences of prior use against complainant's patent, the last amendment being dated in December, 1873, more than 14 months after the answer was filed. That said cause was brought to final hearing in February, 1874, and was decided in favor of complainant June 10, 1874, by his honor Judge Woodruff, and a decretal order was filed therein June 27, ordering an injunction to issue against all the defendants restraining them and each of them from infringing complainant's patent, on which said suit was brought, and ordering an account before Kenneth G. White, esq., master, of defendant's gains and profits and complainant's damages, by reason of defendants' previous infringements of said patent. That the first meeting before said master in said accounting was had about July 22, 1874, and on the request of defendant Imhaeuser and his counsel, Mr. Abbott, from Mr. Blake's office, the master by successive adjournments adjourned the accounting to October 1, 1874, to enable Imhaeuser to go to Europe, where he expected to see his partner Hahn and obtain information which related to their gains and profits;
246 that said accounting was, after that, further adjourned chiefly to accom'odate the defendants or their counsel; that it was not until January 26, 1875, that the testimony before the master was closed, and on February 19, 1875, the master's report was filed.

Deponent further states that the same patent on which the above-entitled action was brought, was sustained by his honor Judge Woodruff, in the case of Buerk vs. Valentine, which was decided March 19, 1872, and reported in vol. 2, of the Official Gazette, p. 295, said case being in the northern district of New York; and is also reported in 9 Blatchford, 479.

J. VAN SANTVOORD.

Subscribed and sworn to before me this 23 day of March, 1875.

W. HAUFF (146),
Notary Public, N. Y. City & County.

Resworn to before me this 30th March, 1875.

R. E. STILWELL,
U. S. Comm'r.

(Endorsed:) Cir. court U. S., southern dis. N. Y. Jacob E. Buerk ag't Wm. Imhaeuser. Aff't of J. Van Santvoord. J. Van Santvoord, compl't's sol'r.

247 U. S. cir. court, so. dist. of New York.

J. Van Santvoord for pl'ff.

JACOB E. BUERK
vs.
WILLIAM IMHAEUSER ET AL.

A. V. Briesen for def't.

JOHNSON, *Cir. J.:*

This is a motion substantially on the ground of newly discovered evi-

dence to vacate the decree, allow the answer to be amended and retry the cause.

Of course such a departure from the ordinary course of the administration of justice could only be allowed for the gravest reasons and upon the plainest proof of the sufficiency of the newly offered evidence to lead the court to a different result.

Upon a careful examination of the two watchman's time detectors which are produced in support of the application, I am of opinion that neither of them would have been regarded by my learned predecessor as an anticipation of the patent in which the plaintiff has obtained his decree. The essence of this he thought consisted in the dial re-
248 volving in the watch arbor in connection with the system of varying marks. And if his judgment in this respect is in accordance with the truth of the case, as I must regard it to be, then the detectors produced, in which the dial was not placed upon the arbor of the watch, are not anticipations of the plaintiff's invention.

It is besides objected that the material affidavits produced are neither entitled in the cause, nor sworn before an officer authorized to administer an oath in this court.

Each objection is well founded. Perjury could not be assigned in these affidavits by reason of the want of the title. They appear to be mere extra judicial oaths, and are not receivable in this court. It has repeatedly been ruled in this circuit, that a notary public has not power since the Revised Statutes to administer an oath in this court. Such an officer had power under sec. 2, of ch. 159 of the laws of 1854. But as that act was revised in section 1778, of the Revised Statutes, and the power omitted, it is gone by force of the general provision contained in section 5596. Notwithstanding these obvious defects, I have
249 thought it right to look into the merits, and upon both grounds I think the motion should be denied.

250 (Endorsed:) U. S. cir. court, so. district of N. York. Buerk vs. Imhaeuser et al. Mo. for leave to amend answer denied. Opinion. Johnson, cir. j. Filed Nov. 11, 1876.

251 At a stated term of the circuit court of the United States of America for the southern district of New York in the second circuit held at the United States court rooms in the city of New York on the 17th day of November, 1876.

Present, the Hon. Alexander S. Johnson, circuit judge.

JACOB E. BUERK
vs.
WILLIAM IMHAEUSER, THEODOR HAHN AND Charles Keinath.

The motion on the part of the defendants for an order that the proceedings under the decree made in this suit June 27th, 1874, be stayed, and that the defendants have leave to amend their answer and take further testimony herein upon the ground of newly discovered evidence having come on for hearing, on reading and filing the notice of said motion and the affidavits, exhibits, and papers accompanying the same and proof of service thereof in support of said motion, and affi-
252 davits in opposition thereto, and A. V. Briesen, esq., having been heard in favor of said motion, and J. Van Santvoord, esq., in opposition thereto and the several matters having been duly considered by the court, it is now ordered, adjudged, and decreed that the said motion for

a stay of proceedings under the decree and for leave to the defendants to amend their answer and to take further testimony in this suit, be and the same is hereby denied.

(Endorsed:) U. S. cir. court, S. D. of N. Y. J. E. Buerk vs. Wm. Imhaeuser et al. Order denying motion to stay decree, &c. J. Van Santvoord, compl't's sol'r.

Enter.

ALEX. S. JOHNSON,
Cir. J.

Eq. No. 5, p. 452. Filed Nov. 17, 1871.

253 Supreme Court of the United States.

JACOB E. BUERCK
vs.
WILLIAM IMHAEUSER, APPELLANT, IMpleaded with Theodore Hahn and Charles Keinath.

To the honorable the Supreme Court of the United States:

The appeal of William Imhaeuser, impleaded with Theodor Hahn and Charles Keinath, respectfully showeth:

That upon the fifth day of July, 1872, the above-named Jacob E. Buerck, complainant, filed his bill of complaint in the circuit court of the United States for the southern district of New York against the above-named William Imhaeuser, Theodor Hahn, and Charles Keinath, defendants, alleging that the said defendants did infringe on a certain letters patent of the United States which were issued to the said complainant on the sixth day of June, 1865, for an alleged improvement in watchman's time detectors, and numbered 48048, the bill showing the issue of said letters patent and charging the defendants
254 with infringement thereof, by constructing, using, and selling watchman's time detectors, made, as the bill alleged, according to the alleged invention and letters patent of the complainant, the said bill further praying that the said defendants be restrained and enjoined from such alleged infringement and from making, using, and selling such watchman's time detectors, and be compelled to account for and pay to the complainant the gains and profits received by the defendants from such alleged infringement and the damages which the complainant alleged he had sustained thereby, to which bill of complaint the defendants Imhaeuser and Hahn filed their answer on the 10th day of September, 1872, and filed an amendment to such answer September 13, 1872, and the complainant thereupon filed his replication September 23d, 1872, and an amendment to the bill of complaint on the 24th day of March, 1873, and the defendants Imhaeuser and Hahn filed an amended answer March 24, 1873, and another amendment to the answer
255 January 21, 1874, in which answer and amended answers the said defendants denied that the complainant was the first and original inventor of the alleged improvement claimed in said letters patent, and averred that the said alleged improvement was well known and in public use in the United States before the complainant, as alleged by him, invented the same, and denied that the defendants ever made, used, or sold watchman's time detectors as described in the said letters patent, and averred that the watchman's time detectors made, used, and

sold by the said defendants were made, used, and sold by them under protection of other letters patent owned or controlled by the said defendants Imhaeuser and Hahn.

As to the defendant Keinath, he did not enter appearance, and a decree pro confesso was entered against him.

And thereupon the complainant and the defendants Hahn and Imhaeuser took proofs in said suit, and the said suit was brought on
256 for final hearing before the said circuit court in the Feb'uary term of the year 1874, upon the pleadings and proofs therein, whereupon the said court, on such hearing, decided that the complainant's said letters patent numbered 48048 were valid, and that the defendants had infringed upon the rights of the complainant under the same, and ordered that a decree be rendered accordingly, and an injunction issue, which injunction thereupon was issued, restraining the defendants from the further manufacture, use, and sale of watchman's time detectors made under the complainant's said letters patent, and that the master of the court should ascertain and report the gains and profits made by the defendants by the manufacture and sale of watchman's time detectors infringing the complainant's said letters patent, and the damages sustained by the complainant by reason of such infringement, and that the defendants pay the costs of the suit to be taxed.

That thereupon the said master made his report under the above
257 decree, and filed it on the 19th day of February, 1875, and the defendants Imhaeuser and Hahn filed their exceptions to such report on the 20th day of March, 1875, and an addition to the exceptions on the 24th day of March, 1875, and that a hearing was thereupon had before the court on such exceptions, and that said court thereupon decided that the said defendants pay over to the complainants, as the profits derived by them from the use and sale of watchman's time detectors infringing complainant's letters patent, the sum of six thousand one hundred and sixty-six dollars, and that the defendants pay also the costs of the suit, taxed at two hundred and sixty-eight $\frac{96}{100}$ dollars, and that on the 14th day of December, 1876, a final decree was made and pronounced in this cause, wherein it was in substance adjudged and decreed that the defendants pay said costs and said damages to the complainants for the manufacture, use, and sale by the defendants of the said watchman's time detectors.

258 Wherefore this appellant appeals from the whole of said decree of said circuit court of the United States and from all the findings of said court in said decree, and respectfully prays that the decree of the said circuit court, and the bill, answer, amended answers, amended bill, pleadings, depositions, evidence, and proceedings in the said cause may be sent to the Supreme Court of the United States without delay, and that the said Supreme Court will proceed to hear the said cause anew, and that the said decree of the circuit court, and every part thereof, may be reversed and a decree made dismissing the bill of complaint herein, with costs to the complainant, or such other decree as to the Supreme Court shall seem meet.

And this appellant, William Imhaeuser, further showeth that as a decree pro confesso has been entered in this cause against the defendant Charles Keinath, as afore stated, said Keinath is thereby precluded from joining in this appeal, and that the third defendant, Theodore
259 Hahn, with whom this appellant is also impleaded, is ever since the year 1873 permanently domiciled in Stuttgart, Germany, and that said Theodore Hahn has no property whatsoever in the United States, is no longer the partner of this appellant, Imhaeuser, and has no

actual interest in this suit, and has frequently been invited by this appellant, in writing, to join in the defence of this suit and in this appeal, but that he has always refused to do so, and that this defendant and appellant, Imhaeuser, has since two years borne all the expenses of this suit alone, and without any assistance from the other defendants, and is actually the only defendant interested in this suit.

WILLIAM IMHAEUSER.

A. V. BRIESEN,
Def't's Sol'r.

Circuit court of the United States, southern district of New York.

William Imhaeuser, being duly sworn, deposes and says that he is the appellant hereinabove named; that he has read the foregoing appeal, and that the statements therein contained are true to the best of his knowledge, information and belief.

WILLIAM IMHAEUSER.

Subscribed and sworn to before me this 27 day of Dec'r, 1876.

JOHN A. SHIELDS,
U. S. Commissioner S. D. of N. Y.

(Endorsed:) Filed Dec'r 27, 1876.

Supreme Court of the United States.

JACOB E. BUERCK
vs.
WILLIAM IMHAEUSER, APPELLANT, THEODOR HAHN, CHARLES KEINATH.

An appeal having been taken in the above entitled cause to the Supreme Court of the United States by said William Imhaeuser, and a bond having been by him filed with two sureties on the 28th day of December, 1876, and the said bond having been approved by the Hon. Judge Blatchford, and the counsel for complainant objecting to the sufficiency of the sureties thereon and to the amount thereof: Now, therefore, it is agreed and stipulated by and between the attorneys for the parties to the above entitled cause that the bond hereto attached be substituted for the bond filed December 28th, 1876, and that said bond filed December 28th, 1876, be cancelled, withdrawn, and destroyed by the attorney for William Imhaeuser, and the court is prayed, if it approve the bond herewith presented, to order according to this stipulation.

J. VAN SANTVOORD,
Compl't's Sol'r.
A. V. BRIESEN,
Of Counsel for Defendant.

In accordance with above stipulation, ordered that the bond filed December 28th, 1876, be cancelled, withdrawn, and destroyed by attorney for William Imhaeuser, and that the bond hereto attached be substituted in its place, and the within bond is hereby approved.

ALEX'R S. JOHNSON,
Cir. J.

263 Supreme Court of the United States.

JACOB E. BUERCK
vs.
WILLIAM IMHAEUSER, APPELLANT, IMPLEADED with Theodor Hahn and Charles Keinath.

Know all men by these presents, that we, William Imhaeuser, of No. 65 South 8th street, in the city of Brooklyn, in the State of New York, Henry Yutle, of 293 Stanton street, in the city of New York and State of New York, and William Wagner, of 269 William street, in the city of New York, are held and firmly bound unto Jacob E. Buerck, of Boston, Massachusetts, in the sum of eight thousand and five hundred $\frac{00}{000}$ dollars ($8,500$\frac{00}{000}$), lawful money of the United States of America, to be paid to said Jacob E. Buerck, his executors, administrators, or assigns, for which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents, sealed with our seals, dated the tenth day of January, in the year of our Lord one thousand eight hundred and seventy-seven.

Whereas the above bounded William Imhaeuser hath taken an
264 appeal to the Supreme Court of the United States to reverse the decree rendered in the above entitled action by the circuit court of the United States for the southern district of New York:

Now, therefore, the condition of this obligation is such that if the above named William Imhaeuser shall prosecute his said appeal to effect and answer all costs and damages, including just damages for delay and costs and interest on the appeal, if he shall fail to make good his plea, then this obligation shall be void, otherwise to be in full force and effect.

WILLIAM IMHAEUSER. [L. S.]
HENRY YÜTLE. [L. S.]
WILLIAM WAGNER. [L. S.]

Sealed and delivered in presence of—
J. M. DEUEL.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

Henry Yutle, being duly sworn, deposes and says that he is worth the sum of eight thousand five hundred dollars over and above all his just debts and liabilities, and that he is a freeholder within the city of New York.

HENRY YÜTLE.

Subscribed & sworn before me this 10th day of Jan'y, 1877.
J. M. DEUEL,
U. S. Comm'r.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

265 William Wagner, being duly sworn, deposes and says that he is worth the sum of eight thousand five hundred dollars over and above all his just debts and liabilities, and that he is a freeholder within the southern district of New York.

WILLIAM WAGNER.

Subscribed & sworn to before me this 11 day of Jan'y, A. D. 1877.
J. M. DEUEL,
U. S. Com. S. D. of N. Y.

SOUTHERN DISTRICT OF NEW YORK, *ss:*

On this 10 day of January, 1877, personally appeared before me William Imhaeuser and Henry Yutle, who, being by me duly sworn, depose and say that they are the persons named in the foregoing bond, and that they executed the same for the purposes therein set forth.

J. M. DEUEL,
U. S. Com's'r S. D. of N. Y.

SOUTHERN DISTRICT OF N. Y.:

On this 11 day of January, 1877, before me personally appeared William Wagner, who, being by me duly sworn, says that he is the person described in the foregoing bond, and that he executed the same for the purposes therein set forth.

J. M. DEUEL,
U. S. Com's'r S. D. of N. Y.

266 SOUTHERN DISTRICT OF N. Y.:

Henry Yütle, being duly sworn, says he is the same person mentioned in the city directory as Henry Jutle, of 293 Stanton street, and I am by occupation a tailor, and I am a native of Germany, and am naturalized. I have been a citizen about twenty years.

I own in my own right, by purchase, a brown-stone house, 116th street, New York, number 304, which I consider worth about twelve thousand dollars, and it is under mortgage for seven thousand to the Germania Fire Insurance Co., of Broadway; I also own in my own right a brick house, 119th street, No. 222, worth about $10,000, subject to a mortgage of $6,000, and I own the lots on which those houses stand; I also own in my own right about 14 acres of land and the buildings thereon, which I bought from Mr. Oakley during the year 1876, situated at Hempstead, Long Island, worth about $15,000, and under mortgages amounting to $7,500. No other mortgages on these pieces of property and no judgment against me.

The deeds of the property mentioned above are made out in my name, spelled Henry Yütle.

HENRY YÜTLE.

Subscribed & sworn to this 10 day of Jan'y, 1877, before me.

J. M. DEUEL,
U. S. Com's'r S. D. of N. Y.

267 SOUTHERN DISTRICT OF N. Y., *ss:*

William Wagner, being sworn, says he resides at 269 William street, in the city of New York; I own property 267 & 269 William street, in said city, and have owned the same since 1868. I have been offered over $30,000 for the above property, and I consider the property worth said sum. There are mortgages on said property to the amount of $15,500; I own no other real estate. The above property is recorded in the register's office in my own name. That I am worth $15,000 over and above all my just debts and liabilities in property subject to execution.

WILLIAM WAGNER.

Subscribed and sworn to before me this 11 day of Jan'y, 1877.

J. M. DEUEL,
U. S. Com's'r S. D. of N. Y.

268 (Endorsed:) Supreme Court of the United States. Jacob E. Buerck vs. William Imhaeuser, appellant, Theodore Hahn, Charles

Keinath. Bond on appeal. E. & A. D. No. 3, P. B. A. V. Briesen, of counsel for W. Imhaeuser, 258 Broadway, N. Y. Filed Jan'y 12th, 1877.

269 Circuit court of the United States, southern district of New York.
In equity.

JACOB E. BUERK
vs.
WILLIAM IMHAEUSER, THEODORE HAHN, AND Charles Keinath.

This cause having been appealed to the Supreme Court of the United States, now, therefore, it is agreed between counsel for the respective parties that the exhibits in the cause may be sent by the clerk of this court to the Supreme Court at Washington, at the hearing of the appeal, and that the same, after the appeal shall have been heard, be returned to the files of this court.

J. VAN SANTVOORD,
Sol. for Jacob E. Buerk.
A. V. BRIESEN,
Of Counsel for Appellants Imhaeuser & Hahn.

Dated August 22, 1877.

270 Supreme Court of the United States.

JACOB E. BUERCK, APPELLEE,
vs.
WILLIAM IMHAEUSER, APPELLANT, THEODORE Hahn, Charles Keinath.

By the Hon. Samuel Blatchford, one of the judges of the circuit court of the United States for the southern district of New York.

To Jacob E. Buerck:

Whereas William Imhaeuser has lately appealed to the Supreme Court of the United States from a decree lately rendered in the circuit court of the United States for the southern district of New York, made in favor of you, the said Jacob E. Buerck, and has filed the security required by law, you are, therefore, hereby cited to appear before the said Supreme Court at the city of Washington, on the second Monday of October, 1877, to do and receive what may appertain to justice to be done in the premises.

Given under my hand at the city of New York, in the southern district of New York, in the second circuit, the 27th day of December, in the year of our Lord one thousand eight hundred and seventy-six.

SAM'L BLATCHFORD.

271 (Endorsed:) United States Supreme Court. Jacob E. Buerck, appellee, vs. William Imhaeuser, appellant, Theodore Hahn, Charles Keinath. Citation. A. V. Briesen, sol'r and of counsel for appellant and def't, 258 Broadway, N. Y.

Service of a copy of the within citation is hereby admitted. Made on me this 28th December, 1876.

J. VAN SANTVOORD,
Compl't's Sol'r.

Filed Dec. 28, 1876.

272 UNITED STATES OF AMERICA,
Southern District of New York, ss:

I, John I. Davenport, clerk of the circuit court of the United States of America for the southern district of New York, in the second circuit, do hereby certify that the foregoing pages, numbered from 1 to 272 inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of Jacob E. Buerck, appellee, against William Imhaeuser, impleaded, &c., appellant, as the same remain of record and on file in said office.

In testimony whereof I have caused the seal of the said court to be hereunto affixed, at the city of New York, in the southern district of New York, in the second circuit, this 25th day of August, in the year of our Lord one thousand eight hundred and seventy-seven, and of the Independence of the said United States the one hundred and second.

[SEAL.] JOHN I. DAVENPORT, *Clerk.*

(Indorsement on cover:) No. 185. William Imhaeuser, appellant, vs. Jacob E. Buerk. S. New York C. C. U. S. Filed 25th September, 1877.

Supreme Court of the United States.

OCTOBER TERM, 1879. No. 185.

WILLIAM IMHAEUSER, *Appellant*,

vs.

JACOB E. BUERK.

Appeal from the Circuit Court of the United States for the Southern District of New York.

BRIEF FOR APPELLANT.

ARTHUR v. BRIESEN,
of Counsel for Appellant.

NEW YORK:
EVENING POST STEAM PRESSES, 208 BROADWAY, COR. FULTON ST.
1879.

Supreme Court of the United States,

OCTOBER TERM, 1879.

WILLIAM IMHAEUSER, *Appellant*,
vs.
JACOB E. BUERK.
No. 185.

Appeal from the Circuit Court of the United States for the Southern District of New York.

Argument for the Appellant.

Statement of the Case.

This suit was brought by the complainant and appellee for infringement of Letters Patent No. 48,048, granted to J. E. Buerk, June 6th, 1865, for Improvement in Time Detectors. The apparatus which is alleged to be an infringement of said patent is marked "Exhibit B," and is a Time Detector made by the defendant and appellant under Letters Patent, granted to A. Meyer, July 25th, 1871.

The complainant's patent, "Exhibit A," states on its face that the invention described in it is an improvement on a former patent, granted to one John Buerk, January, 1861, which patent is now expired, and of which a re-issue was obtained by the complainant in this cause as assignee on the 8th day of March, 1870. The invention shown in this re-issue, which is in evidence in this cause, and marked "Exhibit J," (page 9, Record of Patent Exhibits) was previously patented in France in 1856, and the American patent, therefore, expired in the year 1871, making the thing described in said re-issued patent public property at the present time.

In said re-issued patent was described a Time Detector in shape of a portable clock, having a rotating ring or drum operated by clock-work in such a manner that the ring would make one rotation around its axis in twelve hours. About this ring or drum is placed a strip of paper, marked into twelve divisions lengthwise, and facing this strip of paper are a series of spring points, or as it has been termed in this controversy, a gang of spring points, which normally, by the action of their respective springs, are out of contact with the strip of paper, so as not to interfere with the rotation of said strip of paper and the action of the clock work. When the watchman, carrying this clock, arrived at a certain station, where a certain key was suspended, his duty was to insert the key into the clock, and turn it once, thereby carrying the ward of the key against one or more of said spring points, and pressing said point or points against the strip of paper, so as to perforate the same at the particular place which was then opposite these spring points. Numerous stations could thus be visited by the watchman carrying the clock, and at each station a different key would be suspended, enabling the watchman to mark by the insertion and rotation of the key the time of his presence at the station, so that when in the morning the controller would open the otherwise locked clock, and remove the strip of paper from the drum carrying it, the indentations or apertures made by the spring points showed first the time at which the watchman was at a certain station; and, secondly, which stations he had visited. Thus, for example, the first station visited may have a key which would actuate the uppermost of the gang of spring points, the next station have a key which would actuate the second spring point, &c., and by the position transversely of the holes produced in the strip of paper the controller would be able to perceive the number and location of stations visited; whereas, by their position longitudinally, with reference to the time divisions on the paper, he would be able to ascertain the time at which each particular station was visited. Said re-issued patent, which the court will find reproduced in the Defendant's Record of Patent Exhibits, on pages marked 8, 9, 10 and 11, had amongst others a broad claim, as follows:

"*Second.*—The combination of the marking device fastened in-
" ternally to a time-piece, with a watch movement, and with a series
" of keys and a surface for receiving marks substantially as de-
" scribed."

There was therefore a broad claim in said reissue for the fundamental invention embodied in the structure just described.

The improvement of the complainant upon the invention recited in

said reissued patent, which improvement is set down in and constitutes the basis of the patent on which this suit is brought, consists in substituting for the drum, carrying a long strip of paper, which was tied around it, a circular disc of metal carrying a paper dial of circular form. This disc of metal is rotated once in twelve hours around its axis by the action of the clock mechanism within the casing of the clock, and carrying the paper dial, which is properly marked and subdivided, first, by radial lines to indicate the divisions of time, and second, by circumferential lines to indicate the divisions of stations, causes a corresponding rotation of said dial. The gang of spring points which had been contained in the former mechanism of John Buerk's expired patent was in Jacob E. Buerk's patent placed beneath the paper dial where the same extends beyond the circumference of the metallic disc, it being necessary in Jacob E. Buerk's structure that the paper dial is of greater diameter than the metallic disc, carrying it so that the spring points could reach the divided portions of the paper dial when pressed upwards from below by the action of the keys. The keys act upon the spring points in Jacob E. Buerk's device precisely in the same manner as they do in John Buerk's device, namely, the points are by the action of the keys carried against and through the paper dial perforating it from below and producing a barb on the upper face of the paper, which barb indicates by its position on the paper dial, when the clock is afterwards opened, the time of the watchman's visit to any given station and the number of the station visited. The claims granted to the appellee in said patent are as follows :

" *First.*—The use of a false revolving dial *E*, in combination with " the stationary index *D* and spring points *d*, constructed and oper- " ating substantially as and for the purpose set forth.

" *Second.*—Producing the perforations on the paper dial or its " equivalent from the inside out, instead of from the outside in, as " before."

In other words, the first claim appears on its face to be for the combination of the false dial, regarding it in its character as a flat, circular disc in contradistinction to the strip of paper formerly used by John Buerk with a stationary index, which is a plate placed over the paper dial and simply serves as an abutment to prevent the spring points from merely lifting the paper, in which case they would fail to penetrate it. That is to say, said index is placed over the row of spring points, above the paper dial, to hold the paper down at the

place where it is to be penetrated. With this dial and index are combined, according to said first claim, the spring points. As distinguished from the former patent of John Buerk this claim introduces one new element solely, which is the index, and this element becomes necessary from the fact that in John Buerk's patent the paper was penetrated from the outside inwardly against the drum that carries it, thereby rendering it unnecessary to provide an additional abutting surface; whereas in the new structure the paper is pushed up, away from the disc that carries it, rendering an additional abutting surface positively necessary.

The second claim is for producing the perforations on the paper dial from the inside out; whereas in John Buerk's patent they were produced from the outside in. The advantage alleged in the patent as far as this feature is concerned is that the barbs produced on the upper face of the paper cannot be reproduced or counterfeited by the watchman himself by any instrument inserted from above.

The defendant's clock, Exhibit B, which, as already stated, is made under patent of A. Meyer, granted in 1871, of which patent a copy is contained on pages 50, 51 and 52 of the Record of Patent Exhibits, has the following construction: A disc of paper, of which the outer part is not divided by lines into any kind of subdivisions, is placed upon a rotating metallic disc which is revolved once around its axis in twelve hours. Below the paper, where it extends beyond the carrying disc, are securely fastened within the clock a series of dies or types carrying figures or letters, such as 1, 2, 3, etc., or A, B, C, etc., each die or type representing the name or number of one of the stations to be visited. Above this row of dies or types, which are immovable and not in any sense spring points, is what appears at first glance like J. E. Buerk's stationary index. The index plate or bridge, *g*, as it is termed in A. Meyer's patent, has its lower face inclined and serves to gradually crowd the ward of a key which is inserted from above, down upon the paper, so that when the key is inserted through a key hole in the lid of the apparatus and turned once around, beneath the bridge *g*, its ward presses the paper firmly down upon one of the fixed types or dies which are secured in the clock below the paper, so as thus to stamp a mark into the paper which shall indicate the name of the station and the time of visit at once, the blank paper having a time index printed upon its central portion.

There is, therefore, in defendant's apparatus, no gang of spring points, no stationary index in the sense of the complainant's patent, no paper dial necessarily divided, as in complainant's patent, and

certainly no production of perforations from the inside out instead of from the outside in, as stated in the complainant's patent.

The state of the art as disclosed by the proofs in this cause shows, amongst other things, the following facts:

A French patent was granted to J. B. and C. M. Schwilgué April 28th, 1847; it is marked Defendant's Exhibit No. 1, and a verified translation of it (Defendant's Exhibit No. 2) is found on pages 14 to 19 inclusive of the record of patent exhibits. A correct model of it is marked "Defendant's Exhibit No. 4." In this patent of Schwilgué is shown that which is patented in the complainant's patent here in controversey, namely, a rotating metallic disc operated by the clock work contained in the case and revolved once in twelve hours around its axis; a paper dial marked precisely as J. E. Buerk's dial with radial and circumferential lines, carried by said disc and overhanging it and passing under a stationary index or abutment, and under this disc is a spring point or marker, which by the action of a key is brought up to penetrate the paper from below and mark the time of punctuation and also the number of the station. The only difference between Schwilgué's device and the complainant's is, that the latter has a *gang* or series of spring points, of which each point can be operated by one of a series of keys, whereas in Schwilgué's patent there is only one spring point, which is moved by the key actuating it, first laterally to the desired position, and then up to penetrate the paper. Schwilgué uses a series of key-holes, one for each different key, and attaches his spring point to a swinging rod, which being first pushed by the key, carries the point to the proper distance from the axis of the paper dial, and afterwards, by the rotation of the key, allows the spring point to pierce the paper at the desired point in the manner stated. In view of Schwilgué's device and in view of the expired patent of John Buerk, the court will find that Jacob E. Buerk simply made the following invention: He placed the gang of spring points of John Buerk's device beneath the paper dial and stationary index of Schwilgué's device; to this particular combination his invention must be limited. Nothing further has been suggested by Jacob E. Buerk, and it seems proper to ask whether it is a patentable invention to place John Buerk's gang of spring points under Schwilgué's dial and index. If the court should answer this question in the affirmative, it will necessarily decide that such a limited improvement cannot be expanded to cover the patentably different, the far superior and the widely departing construction of defendant.

The clock marked Exhibit No. 7 has been testified to be a modification of Schwilgué's device which any skilled mechanic would be

able to make and in which the Schwilgué disc, dial and stationery index are used; also the Schwilgué single spring point; but in which, instead of a series of key holes, each arranged for the reception of only one key, a single key hole is substituted. This modification, Exhibit No. 7, of the Schwilgué device is therefore capable of as compact a form and of the manifold manipulations of which the complainant's device is capable.

Another patent of earlier date than complainant's is that of Rowbotham, Defendant's Exhibit No. 5, which is reproduced on pages 28 to 32 of the Record of Patent Exhibits, and which is an English patent dated December 4th, 1852. In this device there is also shown a disc, carrying a paper dial, precisely like that of the complainant, and rotated once round its axis in twelve hours. This paper dial overhangs the carrying disc and is marked at proper intervals by any one of a series of keys which are fastened by chains to the respective stations. Each key carries a type at its end, and before it is inserted into the clock is first dipped into an ink fountain formed in the clock case. When inserted through an aperture in the lid of the clock, the inked key prints its number or particular form of type upon the paper dial. That is to say, Rowbotham's device differs from the defendant's device simply in this; that the defendant marks a letter or figure of particular outline by the action of a key which presses the paper upon a corresponding fixed type; whereas in Rowbotham's device, the tyye is secured to the key itself and pressed upon the paper. Prior to Rowbotham's device, however, there was the French patent of Nolet, dated July 8, 1847, Defendant's Exhibit No. 3, reproduced on pages 22 to 26 of Record of Patent Exhibits; which Nolet's device is like Rowbotham's, with this difference—that instead of dipping the key into an ink fountain, carried by the clock, as Rowbotham does, Nolet has a driving spring on his key for sharply propelling the type of the key against the face of the paper dial so as to make an embossing mark upon the face of the paper without discoloring the same. Rowbotham uses the same kind of key as Nolet, and an additional ink fountain for merely printing the paper; whereas Nolet, by the aid of his spring, embosses, so to say, the mark upon the paper. Therefore the result of Nolet's operation will be like that of the defendant's, namely the production of a blank impression of a figure or letter upon the face of the dial after the key has done its work.

Buckney's (Defendants Exhibit No. 6) was an English patent granted May 12th, 1862. It is reproduced on pages 34 to 48 of the Record of Patent Exhibits and shows a clock carrying a paper dial, marked precisely like the complainant's dial and rotating

around its axis once in twelve hours; which clock has a series of holes in its lid, through which keys, rigidly fastened to the several stations, can be inserted, said keys being formed at their ends into the shape of letters or dies, or, as the patent calls it, metal types, which, when pressed against the paper dial, crowd the same against a piece of colored paper placed beneath the dial, so that the mark will be produced upon the reverse of the paper by the pressure of the type, and can be read when the dial is taken off. It will be seen with reference to this patent of Buckney, that it differs from the defendant's structure simply in this: that Buckney uses a black or colored transfer paper in lieu of the fixed dies within the clock, and secures the types to the key, so as to obtain, by the joint action of key and transfer paper, a letter or figure of peculiar form on the dial.

In further explanation of the statement of this case, it is necessary to add that the defendant also manufactures a clock which is marked "Defendant's Exhibit No. 8" and which has all the characteristics of complainant's patent herein controversy, except that instead of a gang of spring points, it shows but one spring point. It has the rotating disc, the stationary index, the paper dial, and, below the paper, one spring point piercing the dial from below by the action of any one of a series of keys. It is very remarkable that this clock, Exhibit No. 8, which was introduced in evidence by the defendant himself, has not been claimed as an infringement of the complainant's patent, although it perforates from the inside out, although it has the combination of the paper dial, the index and the spring point; whereas the clock, Exhibit B, which is fundamentally different from this construction, is charged to be covered by said patent. The reason for this extraordinary fact is that Exhibit No. 8 is clearly the Schwilgué clock. The complainant must admit that if his patent covers Exhibit No. 8, it is anticipated by the Schwilgué patent; therefore the defendant is at liberty to sell clocks like Exhibit No. 8 without any claim to the contrary from the complainant. This fact being admitted, it follows that the complainant's sole claim is the addition of a series of spring points to the clock Exhibit No. 8, and his patent must be limited to that claim. This admission in fact proves that the defendant's clock, Exhibit B, does not infringe the complainant's patent, because it has no spring points at all.

After this suit was decided by the late Judge Woodruff, a motion was made by the complainant to punish the defendant for disobedience of the injunction issued against him, because of the defendant's making and selling a clock like Exhibit No. 2,973, which clock is like defendant's clock Exhibit B, with this exception; that instead of the

stationery index or "bridge," a series of spring plates are secured in the lid to be acted upon by the keys in pressing the paper dial upon the types fixed underneath the paper dial. His Honor, the late Judge Johnson, being called upon to compare this clock, Exhibit No. 2,973, with the complainant's patent, decided as follows: (See page 89 of Record.)

"The Watchman's Time Detector, bought by Gould, was not the same kind of instrument which was adjudged in this suit to be an infringement of the plaintiff's patent. It was made under the sanction of Letters Patent of the United States, dated October 20th, 1874, and numbered 156,098; it must be presumed to be patentably different from the detectors covered by other patents, and a strong and obvious case of infringement, beyond all question or mere colorable difference would be necessary to make it proper for the court to construe the instrument as covered by a decree in another suit, in which its structure had not been in issue nor the subject of examination. The motion cannot be granted, so far as that branch of it is concerned."

Thus it follows that Judge Johnson held the clock Exhibit No. 2,973 to be not a mere colorable difference from Exhibit B, although it merely substitutes a gang of spring points for the stationery bridge of Exhibit B. Hemmed in by the above mentioned admissions and by this decision, it becomes more and more difficult for complainant to show why Exhibit B the clock which is most particulary different from the plaintiff's patent, should be an infringement on said patent, while Exhibits No. 8 and No. 2,973, which are much nearer the plaintiff's structure, should be exempt from the reach of his claims.

It may be interesting, at least, to add that the counsel for the complainant and appellee in this suit is the same, who solicited for the defendant, appellant, the Letters Patent under which Exhibit B is made, and that in said Letters Patent which are marked "Defendant's Exhibit No. 12," (p. 51, Record of Patent Exhibits) the then attorney for the appellant and for the patentee, Meyer, and present attorney for the appellee and complainant, introduced the following specifications:

"I am aware that a Watchman's Time Detector has been heretofore made in which *spring marking points* are used to indicate the different rooms or stations in the beat, such as described in the patent of J. E. Buerk, June 6th, 1865. For these spring marking points I have substituted *stationary dies* representing figures or letters, whereby the stations of a beat are readily recognized; and furthermore, the stationary dies are easier made than the spring marking points; they are less liable to get out of order, and the im-

pression produced by them *cannot be forged without having exact counterfeits of the dies.*"

Upon this statement of patentable difference made by counsel for Buerk, at that time counsel for Meyer and his assigns, the patent was issued to the assignor of the defendant, and we are now brought here to show to the same counsel that this his statement of patentable difference is not a correct statement of patentable difference.

Assignment of Errors.

It is believed that the court below erred on the following grounds:

First.—In holding the complainant's patent Exhibit A to be good and valid.

Second.—In holding that the defendant's clock Exhibit B infringed upon the claims of the patent Exhibit A.

BRIEF.

First.—The complainant's patent is void. Mere duplication of devices is not patentable.

"*Invention, in the sense of the Patent Law, is the finding out, contriving, devising, or creating something new and useful which did not exist before, by an operation of the intellect.*"

Ransom vs. *Mayor*, 1 *Fisher*, 252.

"*A contrivance which does not require the exercise of inventive power is not patentable.*"

Brown vs. *Gill*, 23 *Wallace*, 181.

"*Enlargement of the organization of a machine does not afford any ground, in the sense of the Patent Law, for a patent.*"

Phillips vs. *Page*, 24 *Howard*, 164.

"*The mere change of location of an old device is not patentable, if the result is the same as before.*

Marsh vs. *Dodge and others*, 6 *Fisher*, 562.

"*The mere transfer of a mode of constructing wooden slides and metallic slides is not invention.*"

Carter vs. *Messinger*, 11 *Blatchford*, 34.

"*There is nothing new in the multiplication of parts.*"

Wilbur vs. *Beecher*, 2 *Blatchford*, 132.

The complainant, Jacob E. Buerk, in the face of the prior existence of the Schwilgué patent, and knowing of the prior existence of the John Buerk reissued patent, constructed for his patent here in controversy, a clock precisely like the Schwilgué—we will say like Defendant's Exhibit No. 8, which is admittedly not an infringement; or like Defendant's Exhibit No. 7, which is a modification of the Schwilgué clock; but instead of using only one spring point, he uses a series of spring points. Is this multiplication, or rather this mere adoption of John Buerk's multiplication of spring points patentable? The one spring point of Schwilgué, the one spring point of Defendant's Exhibit No. 8, the one spring point of Defendant's Exhibit No. 7, serves the purpose of piercing the paper to mark the different stations; indeed, it may well be said that the Schwilgué device is superior to the plaintiff's in that it is simpler—in that it permits one spring point alone to mark all the various stations for which Buerk thought it necessary to use a number. But it is said that there is invention in the number of spring points, as contradistinguished from the solitary, single spring point, for the reason that it enables the operator to have the wards of the keys so constructed as to press two or more spring points at any one given time, so as to produce a series of punctures by one key, single punctures by another, and thus to control more stations than there are spring points in the clock. True, this is so; but the same arrangement and advantage of the gang of spring points is already shown in the expired patent of John Buerk, in which this particular feature was set up as a particular advantage, in the following words (p. 10, Patent Exhibits):

"*If a strip of paper or other suitable material is now wound around the drum A, and if one or more of the points are forced up against the circumference of the drum by one of the keys* * * * * * *small holes are produced. The number of the marks produced on the strip of paper depends entirely upon the form of the bit of the key; for if this bit is so arranged that the same depresses* 1, 2, 3, 4, *etc., spring points, an equal number of holes is produced on the corresponding places of the paper. The number of the marks produced by the spring points can be made to correspond to the number of the stations—on the first station one hole, on*

the second two, on the third three, and so on, if the number of the stations does not exceed that of the points. If the number of the stations exceeds that of the points, they can be marked on the strip of paper by various combinations of the points without changing in the least the construction of the apparatus."

It thus appears that the advantages connected with the use of the gang of spring points, were fully embodied in the John Buerk patent, expired, and could not be claimed in Jacob E. Buerk's patent here in controversy.

Taking the claims of the patent here in controversy and comparing them with the Schwilgué clock, we arrive at the following result: The patent Exhibit A claims:

First.—The use of a false revolving dial E, in combination with the stationary index D and spring points d, constructed and operating substantially as and for the purpose set forth."

The Schwilgué clock shows the use of a false revolving dial *E*, in combination with the stationary index *D* and a spring point *d*, constructed and operating substantially as and for the purpose set forth in J. E. Buerk's patent. What the complainant has done was to take, as already stated, the Schwilgué clock and add a few more spring points to the same; which change is not patentable.

The second claim of the complainant's patent is:

"*Producing the perforations on the paper dial or its equivalent from the inside out, instead of from the outside in, as before.*"

The Schwilgué clock is one for producing the perforations on the paper dial from the inside out, instead of from the outside in, as never before.

Stress has been laid upon the fact that it happens to appear in the imagination of complainant's counsel that the metallic disc of the defendant's structure is rotated by what has been termed "the arbor of the watch movement;" but this point is not based upon anything found in the complainant's patent nor upon anything found in the defendant's clock. The patent of J. E. Buerk does not in any manner specify which particular arbor of the watch movement is to carry the metallic disc; nor does it limit itself to any particular arbor, other than that the disc is mounted upon the centre shaft, *i. e.*, a shaft or arbor placed into the centre of the clock case whereby the form of the case and the relation of its walls to the said arbor are involved, but not the relation of the arbor to the mechanism which revolves it. The plaintiff's patent should certainly not be construed

as limited to the putting of the disc upon a special arbor of the movement; any kind of a clock movement that will revolve the disc so that it rotates once in twelve hours around its axis will serve the purpose of plaintiff's patent. Nor are we dealing with a watch movement at all. The defendant's clock is not a time keeper to enable the watchman to know the time of day. There is no exposed dial on it, there are no hands or pointers on it; simply a movement to permit the rotation once in twelve hours of a certain piece of paper concealed within the case for the purpose stated; and the confounding of this mechanism with that of a regular watch movement which has hands and a regular dial to show to the party carrying it the time of day, is one not pertaining to this controversy for the reasons stated.

Second.

The defendant's device does not infringe. This court has held in the case of Werner *vs.* King, 6 Otto, 218, that form, when of the essence of the invention, is necessarily material, or if it be inseparable from the successful operation of the machine, the attainment of the same object by a machine different in form is not an infringement. It has likewise held in Burr *vs.* Duryee, 1 Wallace, page 531, that every man has the right to make an improvement in a machine and evade a previous patent, provided he does not invade the rights of the patentee.

Seymour *vs.* Osborne, 11 Wallace, 556.
Johnson *vs.* Root, 1 Fisher, 351.
Gould *vs.* Reese, 15 Wallace, page 1: 4.

In this last mentioned case it was held as follows:

"Where the defendant in constructing his machine omits entirely one of the ingredients of the plaintiff's combination without substituting any other, he does not infringe; and if he substitutes another in the place of the one omitted, which is new or which performs a substantially different function, or, if old, was not known at the date of plaintiff's invention, as a proper substitute for the omitted ingredient, then he does not infringe." So also, Fuller *vs.* Yentzer, 4 Otto, page 297.

Carver *vs.* Hyde, 16 Peters, 513.
Brooks *vs.* Fiske, 15 Howard, 219.

The first claim of complainant's patent is for the combination of three things:

First—A false paper dial.
Second—A stationary index, and
Third—A series of spring points.

Let us examine into these three elements.

The patent describes the paper dial in the following language :

" The paper dial is marked with figures from one to twelve like the main dial, and with a series of concentric rings *c*, corresponding in number to the stations in the beat. The paper dial shown in the drawing is marked with six rings to correspond to six different stations."

It is submitted that the plaintiff's device would be useless unless the false paper dial be marked with such rings and such radial lines. The defendant's dial, where it is to be printed by the types in the case, is not marked with any rings because the letters or figures imprinted upon it show, without reference to anything else, the name of the stations.

Second—The Stationary Index in the testimony is described as follows :

" This stationary index in the plaintiff's patent is necessarily grooved from below in order to admit the spring points to pass up above the paper, and form the desired barb ; if the index was not so grooved, the spring point would simply press the paper against the flat face of the index, and would not be able to penetrate it. This fact is fully stated in answer twelve of the witness McIntire, page 44 of the Transcript of Record, as follows :" *The patent does not instruct those skilled in the art that the index which serves to support the paper dial on top against the upward thrust of the perforating points should be slotted, or hollowed out to permit the passage of the points through the paper, while the latter is held down each side of the needle point, and is in this respect very insufficient and defective ; but the machine (complainant's clock made under his patent, defendant's Exhibit No. 9) is made with the proper slot in the index underneath, out of sight. It would not work successfully to perforate the paper, and leave the barb on the top surface, as described in the patent, without this discovered feature of construction.*" The defendant's bridge *g* is not so grooved, and moreover is never at all in contact with the paper dial, while plaintiff's must be in contact with it at the time of action.

Third.—The Spring Points. The plaintiff's spring points are needle pointed pins, fastened to springs ; these springs, in the normal condition of the clock, serve the purpose of holding the points *away* from the paper, so that the points shall not by any means touch the paper, as otherwise the latter could not be revolved. When

a key is inserted, it counteracts the spring and forces the spring point up towards and through the paper, piercing the latter. As soon as the key is withdrawn, the spring pulls the pin down again out of and away from the paper. Thus there is a double motion essential in the spring point, one by the key and one by the spring, one up and the other down. Now, in the defendant's device, the types or dies which are secured in the clock case are always stationary, *always in contact with the paper*, but have no double motion nor any single motion nor any motion whatsoever; they can, therefore, not be considered the equivalents of spring points, nor does it appear that they were known as such equivalents at the time of the grant to the complainant of his patent. The putting of types beneath the paper, so distinctly Meyer's invention, was admittedly a patentable invention, because a patent for just that feature was granted to Meyer, owing, no doubt, to the lucid explanation of patentable difference made in Meyer's behalf, as already stated. The claim in Meyer's Patent No. 117,442, (see page 52 of Record of Patent Exhibits) is as follows:

"*The stationary marking die or dies, situated beneath a cam-shaped bridge in combination with a suitable key or keys, and with a dial passing through between the marking die or dies and the bridge, substantially as herein shown and described.*"

It would be a stretch of language beyond all precedent to call the fixed types of defendant's clock Exhibit B, spring points; beyond all precedent to give them a character at all equivalent to that of said double acting and doubly propelled spring points; beyond all precedent to consider, in view of the prior expired Buerk patent of 1861, of the prior Schwilgué, Rowbotham, and Buckney patents, the defendant's combination of fixed type blocks with the movable paper revolving above, and with the cam shaped bridge above the paper and out of contact therewith, and with the keys having cam faces for rubbing the paper down upon the dial, as covered by the Buerk claim for a combination of spring points, false revolving dial and stationary index. Not any one of the functions of complainant's clock can be found in the defendant's; and it may be well in this connection to cite the remarks of his honor, Judge Woodruff, who, when he had before him the now expired patent of John Buerk, in another controversy, in which it was held that a clock like the clock of Jacob E. Buerk's, was an infringement of John Buerk's reissue, in which controversy the Schwilgué patent and the Rowbotham patents were cited as references to the John Buerk patent, said as follows (see page 35 of transcript of record):

"Making a prior device which will serve the like useful purpose

is not necessarily anticipating an invention. Where the mechanical means employed are different and the mechanical result is different, one does not anticipate the other. If this were not so, an inventor who had made a machine which would serve a useful purpose *would exclude all others from the right to a patent for other mechanical devices or combinations producing the like useful result in other modes or producing a different mechanical result which serves the same purpose.*"

A most able exposition this of the law applicable to this controversy; for in defendant's device every mechanical means employed differs from that in plaintiff's. Both clocks serve a like useful purpose, but the mechanical result is not the same, the combination is not the same, and therefore J. E. Buerk cannot exclude the defendant from the right to a patent and from the right of making the machine Exhibit B, here in controversy.

Although the court below held that the defendant's clock Exhibit B, also infringes upon the second claim of J. E. Buerk's patent by producing the perforations from the inside out, instead of from the outside in, it is not deemed necessary here to state, after the court has had the Schwilgué patent before it, that if the defendant produces the perforations from the inside out, he does so under authority of the Schwilgué patent. But as a matter of fact as the key presses the paper down from above into a mould, so to say, for giving it shape, there is no perforation produced at all, or if there be, it is produced by the action of the key from the outside in, and not from the inside out.

Finally, if the defendant's types are to be regarded as equivalents of the gang of spring points shown in the J. E. Buerk patent, they must also be the equivalents of the same gang of spring points shown in the John Buerk patent in which they were fully claimed and which patent is now expired.

As to the question raised that the complainant's patented structure is capable of a complex and greatly varying system of marking, and that therefore the defendant infringes upon complainant's patent, it is answered that:

A.—This complex system is not claimed.

B.—If claimed it would be anticipated by John Buerk, and by Buckney.

The same complex marking system is fully shown in the Buckney patent, which has a series of apertures for receiving at the same time either one or more marking devices and making therefore the complex system of marking possible.

C.—The defendant's clock Exhibit B, does not have a larger number of keys than types, and does not, *as a matter of fact*, show the complexity of combination or the adaptability of marking with more than one type at the same time. If the plaintiff's patent is therefore to be regarded with reference to the possibility of using more than one spring point at the same time, it must be held anticipated, and it must also be found that the patent does not cover defendant's structure, which as a matter of fact does not have more than one key for each type.

A general comparison shows furthermore that in the complainant's clock the paper is passive ; it is carried along by the clock work and submits to the piercing action of the spring points without in any way influencing the action of the mechanism ; but in defendant's clock the paper assists in performing the functions of the apparatus ; it becomes positive, so to say, in the operation, in that it yields to the action of the key gradually, thus utilizing the cam edge of the bridge, and gives a spring to the apparatus which otherwise would not enable the key to pass under the bridge. In defendant's device the key itself must wipe the paper and gradually mould it into shape upon the fixed type. The paper in defendant's device is acted upon by key and type at the same time, and in turn the paper acts upon the key and calls the cam bridge into action. In complainant's device the paper is only acted upon from one side by the spring point and has no influence upon the action thereof. If the watchman opens complainant's clock with a false key he can remove the paper dial and pierce it with a pin or needle so as to deceive his employer. If the watchman should be able to open the defendant's clock he could not even then forge the impressions, as the bridge covers the types and prevents them from acting except with the aid of the particular station—or marking keys. In defendant's clock the distance between the lower face of the paper and the lower surface of the cam bridge must be *less* than the thickness of the paper added to the length of the bit of the key ; so that the bit of the key will in the act of passing under the bridge reduce the thickness of the paper in order that it may be able to pass under the bridge, and in so doing the key impresses upon the paper the desired mark.

All of which differences are patent, are material and render the two devices in structure and effect radically different.

Respectfully submitted,

A. v. BRIESEN,
Attorney for Appellant.

NEW YORK, December 8, 1879.

Supreme Court of the United States.

OCTOBER TERM, 1879.

WILLIAM IMHAEUSER,

Appellant,

vs.

PHILADELPHIA BAR ASSOCIATION

JACOB E. BUERK,

Appellee.

[Number 185.]

BRIEF FOR APPELLEE,

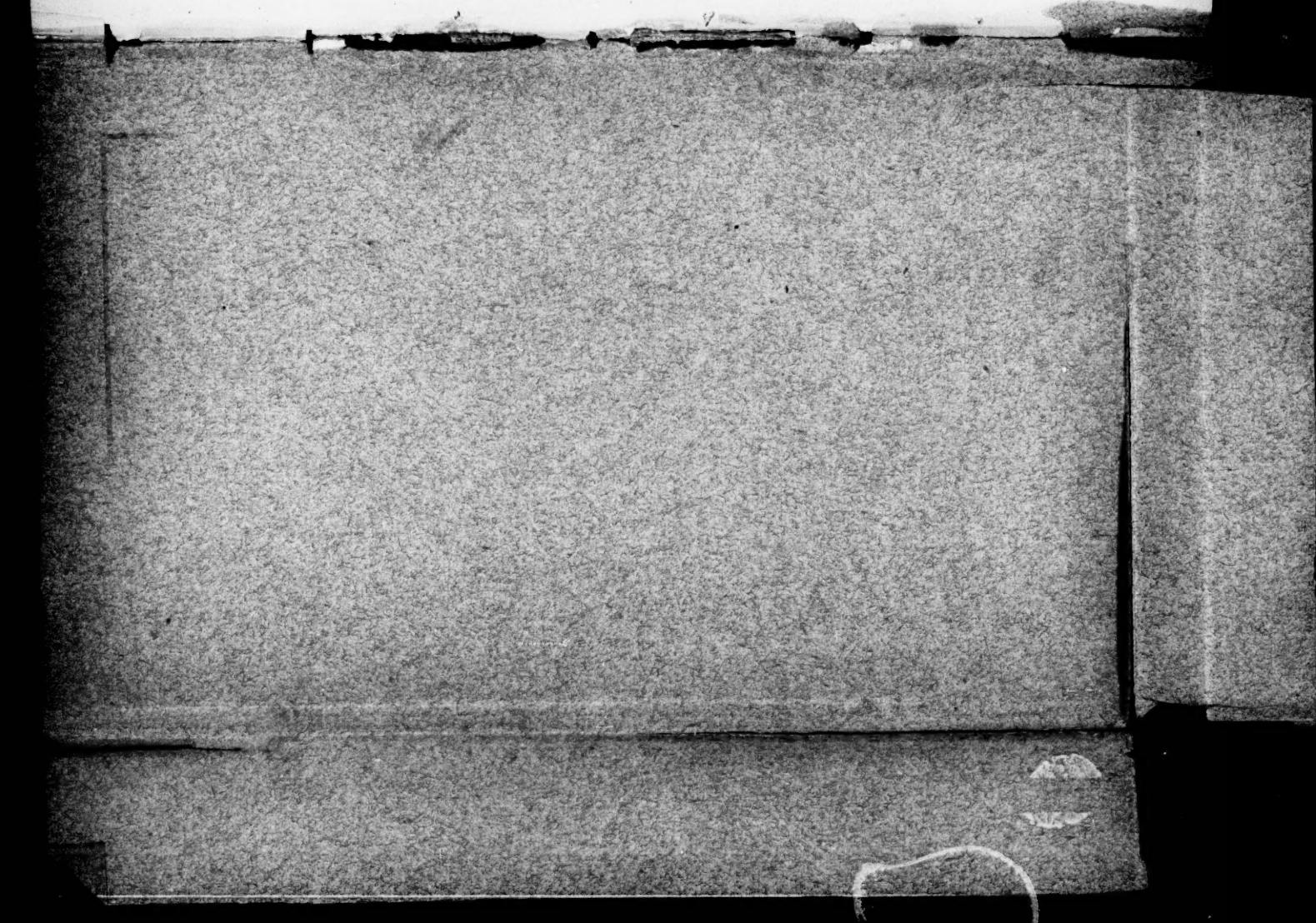
BY

J. VAN SANTVOORD.

New York:

GEORGE BROWN, JR., PRINTER, No. 25 VANDEWATER ST.

1879.



Supreme Court of the United States,

OCTOBER TERM, 1879.

WILLIAM IMHAEUSER, *Appellant.*
vs.
JACOB E. BUERK, *Appellee.*
No. 185.

Brief for Appellee.

This is an appeal from a decree of the Circuit Court for the Southern District of New York.

The appellee brought suit against IMHAEUSER, HAHN AND KEINATH, doing business under the name of IMHAEUSER & Co., for the Infringement of his Patent, No. 48,048, dated June 6, 1865, for Improvement in WATCHMAN'S TIME DETECTORS.

The bill was filed July 5, 1872, and was taken as confessed against Keinath. The other defendants filed their answer Sept. 10, 1872, and amended it three times. The answer is printed at p. 6, and the amendments at pp. 8, 10, 11.

The amended answer denies the novelty of the invention, and sets up, as supposed anticipations of appellee's invention, the following foreign patents and publications:

A French Patent of Nolet. of 1847.

A German work by Schreiber, of 1856.

A French Patent of Schwilgue, of 1847.

An English Patent of Rowbotham, of 1852.

An English Patent of Buckney, of 1862.

The answer admits that defendants had made and sold watchman's time-detectors, and avers that they were made under two patents, one granted to Theodore Hahn, dated in 1869, and the other granted to A. Meyer, dated in 1871. The infringing detectors are known as the Hahn-Meyer-watchman's time-detectors.

The cause was heard, on pleadings and proofs, by his honor, the late Judge Woodruff, in March, 1874, and was decided by him in June, 1874. His opinion is printed in the Record at p. 49.

Judge Woodruff refers in his opinion to a previous decision made by him in the suit of this appellee against Valentine, 9 Blatch., 479, in which the same patent, No. 48,048, here in suit, and also a previous patent belonging to the appellee, and since expired, known as the John Bürk Patent of 1861, were sued on.

The decision in the Valentine suit, and the pleadings therein, are printed in the Record—the decision at pp. 31 to 37, the bill at p. 17, the answer at p. 24.

Judge Woodruff made, as usual, an elaborate examination of the patented inventions, and of the prior patents and publications set up in defense, and decided for the appellee in both suits.

He begins his decision in the present suit with the following reference to the Valentine suit:

> "I have re-examined the decision heretofore made by me in Buerk *v.* "Valentine (9 Blatch., 479), so far as it bears upon the contest in "this suit. In that case, the patents and the patented devices, in- "cluding the patent for the infringement of which this suit is "brought, are fully described. The additional evidence here in- "troduced does not alter my conviction that the invention now "in question, and secured to the complainant by his patent of "June 6th, 1865, was not anticipated by any of the devices to "which the evidence relates; nor by John Bürk, upon whose in- "vention that of the complainant was an improvement."

The case was sent to a Master by the Interlocutory Decree, printed at page 50 of the Record, with directions to take an account of the number of the infringing watchman's time-detectors made, and the number sold by the defendants since the date of the Patent, June 6, 1865, and the number on hand, and the profits of defendants, and the damages suffered by complainant (the appellee here) over and above such profits of defendants.

The Master's Report is printed at page 52 of the Record,

Profits of Defendants.

The Master reported that the three defendants, down to the time Keinath left the concern, made a profit, by the sale of 61 detectors of	$1,748 24
Further, that the defendants, Imhaeuser and Hahn, after Keinath left them, made an additional profit, by the sale of 376 detectors, of	3,748 28

Damages Sustained by Appellee.

The Master reported, further, that appellee had sustained the following damages:	
On the 61 detectors, at $53.25 each	3,248 25
On the 376 detectors, at $53.25 each	20,022 00

The "damages" which the Master reported were ascertained by multiplying the number of detectors which the defendants sold by the amount of profit which the appellee made by the sale of his detector.

The Master also reported that two of the defendants, Imhaeuser and Hahn, had on hand 48 [it should be 28] detectors, and that all defendants' detectors referred to were known as the "Hahn-Meyer's-Watchman's Time-Detector."

The report of the Master was excepted to by defendants, Imhaeuser and Hahn. The exceptions are printed at pages 64–66 of the Record.

The argument on the exceptions came on to be heard in November, 1875, before his honor, the late Judge Johnson, who disallowed the "damages" reported by the Master, and ordered a decree for the profits, with interest thereon from the date of the Master's report.

Judge Johnson's opinion is printed at page 67 of the Record.

The final decree was entered Dec. 14, 1876. It is printed at page 70. The decree awards to the appellee the sum of $1,961.00, including interest from the date of the Master's report, for the gains and profits realized from the infringement by all the defendants, while Keinath was with them in their firm, and $4,205, including interest from the date of the Master's Report, for the gains and profits realized by Imhaeuser and Hahn in addition thereto after Keinath left the firm, and $268.96 for his costs and disbursements.

The appellee, Mr. Buerk, finding that Imhaeuser had violated the Injunction of the court by further infringement, moved for an attachment against him for the contempt, and after hearing the parties, his honor, Judge Johnson, fined Imhaeuser for the contempt, and ordered an attachment to issue in case of default in paying the fine.

Judge Johnson's opinion in the contempt proceeding is printed at p. 89 of the Record, and the order for the fine and attachment at p. 90.

The papers relating to these proceedings against Imhaeuser for contempt occupy from p. 71 to p. 91 of the record. They do not form any part of the case which is here on appeal and should not have been sent up from the court below.

The papers which occupy the record from p. 92 to p. 105, are also irrelevant to this appeal, and should not have been sent up here. They relate to a motion made by Imhaeuser and Hahn to stay the decree and amend the answer on the alleged ground of newly discovered evidence. The motion was denied by Judge Johnson. His opinion and order thereon are printed at pp. 104, 105 of the Record.

This Court, in considering this appeal from the final decree, will not review the proceedings for contempt of the Injunction, nor those on the motion relating to newly discovered evidence. See,

Kew *vs.* Clampitt, 95 U. S. Reports, 188, bottom of page 189.
Boone *vs.* Chiles, 10 Pet. 178.
Russell *vs.* Southard, 12 Howard, 139.
Gittings *vs.* Burch, 2 Cr., C. C. 97.
Abbott's *U. S. Practice, Vol. II, p.* 228 *et. seq.*

The Invention Secured by Appellee's Patent.

The patent on which this suit is brought is No. 48,048, Exhibit A. granted to the appellee, Jacob E. Buerk, June 6, 1865, for an Improvement in Watchman's Time Detectors.

A watchman's time-detector is a mechanism intended to be used to detect neglect or delinquency on the part of a watchman in making the rounds of his beat in a factory or other establishment. The earliest mechanisms used for that purpose were clock movements stationed in the rooms to be visited by the watchman, each room being provided with a stationary mechanism on which the watchman was required to mark the proof of his visit.

These early stationary detectors were followed by portable watch movements which were to be carried by the watchman throughout his beat, and on which he stamped by means of ink or coloring matter the proof of his visit to the rooms where the ink and the stamp for applying the ink were placed. Rowbotham's apparatus, Defendants Exhibit No. 5, printed at p. 29 of Record of Exhibits is an example of that kind. The ink is applied by the watchman upon a paper dial concealed in the watch-case, and which was reached by the ink-stamp through a hole in the case. That is an English patent of 1852.

Another example of the same kind of detectors as Rowbotham's is the one described in the French patent to Nolet of 1847. Indeed, it is evident from a comparison of Rowbotham's and Nolet's patents, that they are identically the same in construction and operation. Nolet's patent is printed p. 23 of Record of Exhibits, and is Defendant's Exhibit 3.

Another example of the same general character as Rowbotham's and Nolet's detectors, is the one described in Buckney's English patent, Defendant's Exhibit 6, printed at p. 35 of Record of Exhibits. Buckney uses

transfer paper placed next to a paper disk, and prints the shape of the type at the end of a key on the paper disk, through the agency of the transfer paper, by the direct application of the key, similar the Rowbotham and Nolet method.

Another kind of portable detector consisted of an elongated box, not too large to be carried upon the person of the watchman by means of a strap. The box contained a watch movement at one end, and a detecting apparatus at the other end. The detecting apparatus comprised a separate paper dial mounted on a different arbor from that of the watch movement, and the paper dial was exposed to be perforated by a pin which was compelled to traverse the paper dial by means of a series of push-keys of varying length, each key pushing the lever which carries the pin a different distance over the paper dial. This device is described in the French patent of Schwilgue, of 1874, Defendant's Exhibit 2, printed at p. 15 of the Record of Exhibits. There was a different keyhole for every separate key.

The above mentioned devices, namely: Rowbotham's, Nolet's, Buckney's and Schwilgue's, compose substantially the defenses set up against appellee's patent in this suit.

The appellant also relied in the court below upon the expired patent of John Buerk, of 1861, which was owned by the appellee. That patent, or rather the invention described in it, was considered by Judge Woodruff, along with the defenses above enumerated, in his decision in this suit.

The John Buerk patent is referred to in the patent which is here sued on, for in the first part of the description the appellee says:

> "This invention relates to an improvement in that class of Watch-
> "men's Time detectors, on which a patent has been granted to
> "John Buerk, January 1st, 1861."

The John Buerk device is shown in the copy of his patent printed at p. 9 of the Record of Exhibits. His invention was a long step in advance of what preceded it. He combined with the watch movement, a drum, mounted and revolving on the arbor of the watch movement. The drum was contained in the watch case, and it carried upon its periphery a strip of paper divided off by marks to represent hours and parts of hours. Opposite the periphery of the drum and within the watch-case were arranged a series of spring marking points; and close behind the spring marking points was a pin placed opposite an opening in the watch-case, forming a key-arbor to receive a series of keys by means of which the spring points could be pressed, singly or two or more at the time, against

the paper strip. Each key had a different bit, the bits varying from each other in their location, or number, or width, so that the bit of one key would press one of the springs against the paper so as to mark it; another, to press two springs against it at once; another three; and so on. Again, another key would press the first and second springs, another the first and third; another, the second and third, and so on. Each key was secured in its own appropriate room or station, so that the marks on the paper indicated the time when the key corresponding to such marks was used, and consequently at what hour or fraction of an hour the watchman visited such room.

Description of the Improvement Patented by Appellee.

The invention secured by the appellee in his patent No. 48,048, and which he describes as an improvement in the class of detectors to which John Buerk's patent belongs, is a long step in advance of the previous devices.

Instead of a strip of graduated paper mounted on a drum, the appellee employs a revolving dial and stationary index. This revolving dial is mounted on the centre shaft or arbor of the watch, in place of the ordinary hands. It is marked with figures from 1 to 12, and revolves once in twelve hours. It rotates under the inner end of the stationary index, and carries on it false removable dials of paper or other suitable materials, also marked with figures from 1 to 12, and with a series of concentric rings, corresponding with the number of stations in the watchman's beat. The rings are arranged so as to correspond with a series of spring points arranged in a straight line radial to the watch arbor.

The stationary index serves a double purpose. It serves as an index by which to set the revolving dials, and also serves as a bearing against which the stationary dial is supported against the underthrust of the spring points, when they are separately or in pairs, or otherwise, pressed up by the keys so as to perforate the paper.

The keys are the same in principle of construction as the keys used in the John Buerk invention of 1861, and are inserted in a keyhole so located that their bits, when the keys are turned, force the spring points, one or more, towards the paper dial, so as to perforate it, while it is revolving, thereby showing when it is afterwards examined, the exact time when the watchman used the key.

The specification of appellee's patent, No. 48,048, describes the nature and the object of his improvement, stating that by dispensing with the drum the expense of the mechanism is decreased, and showing that the operation of applying the strips of paper to the drum and removing them is tiresome, and requires much care. His substitution of a stationary index and revolving dial for the drum of John Buerk's patent, enables him to simplify the instrument and to lessen its cost, and furthermore, the spring points are so arranged as to be concealed, and the perforations or marks produced by them are towards and against the under side of the paper dial, or, as stated in the claim, "from the inside-out instead of from "the outside in as before," leaving a slight [illegible] on the exposed or upper surface of the paper dial, a similar perforation cannot be produced unless the paper dial is taken off and removed from the instrument. This improvement, therefore, is of vital importance, because it prevents a watchman from tampering with the paper dial, even if he was able to open the watch-case.

Appellant's Time Detector Infringes Appellee's Patent.

The Time Detector sold by appellant is in appearance and general construction substantially similar to the appellee's detector.

Appellant employs a portable watch movement;

A series of kyes and a single key-hole;

A revolving dial fastened to the watch arbor;

He removes from the arbor, as complainant does, the hour and minute hands;

He employs a false or paper dial;

He employs the complainant's stationary index, and also a series of markers, arranged radially with respect to the centre of the dial, but the markers are unyielding, while the stationary index is so constructed as to yield;

He arranges the markers under the false dial, and places the yielding index over the back of the false dial, so that the marks are made from the inside out.

Appellant's infringing time detector is marked Exhibit B.

Mr. Faber du Faur, the expert who was examined by the appellee, says of the infringing detector, Exhibit B (see answer 4, p. 15 of the Record), that in his opinion it is substantially the same in construction and operation as the watchman's time-detector described in Appellee's patent, No. 48,048, the only difference being in the construction of the marking device which is not the identical device described in the patent, but is modified for the purpose of evading that patent.

Mr. Faber du Faur proceeds to say of defendant's (appellant's) detector, Exhibit B, as follows:

> "While preserving the arrangement of the markers in a line radiating "from the centre, the markers are made stationary, and instead of "pressing *them* against the paper by means of the keys, while the "index is supporting the paper in Exhibit B, the keys supported "by the stationary index, press *the paper against the markers;* the "faces of the markers, instead of being simple points, form small "figures, and the divisions of the paper dial, by concentric circles, "is omitted, as it appears that the different figures are to indicate "the different stations, although the radial arrangement of the "gang of markers is necessarily preserved. By pressing on the "stationary index of Exhibit B, I find that it readily yields. By "taking a sight over the edge of the case parallel to the dial, and "turning one of the keys for the purpose of making a mark (the "watch being open), I find that, during this operation, the station- "ary index yields and acts as a spring. The marks made I con- "sider perforations, in the sense of complainant's patent. The "arrangement of the marking device is substantially similar, or the "mechanical equivalent of the marking device or spring points in "complainant's patent, which form one of the elements of the first "claim, the false revolving dial and the stationary index are the "same in Exhibit B as in complainant's patent.
>
> "I also find in Exhibit B the perforations or marks made from the "inside out, as claimed in the second claim of complainant's "patent.

The comparison of defendants', (appellant's) time-detector, Exhibit B, with the invention claimed by the complainant in his patent of 1865, shows, therefore, that the defendants produce the marks on the paper by the turning of the bits of the keys between the stationary index and the markers, the index being made so as 'to slightly yield or spring,' and thus

allow the keys to turn under it between it and the markers. It is evident, that in order to produce the desired result on the frail surface of the paper dial, *either the markers must be yielding, or the index or abutment under and against which the bits of the keys turn must be yielding.*

If *both the markers and the index are absolutely unyielding*, the keys cannot be turned without either tearing the paper to pieces and obliterating the marks, or breaking the key.

Therefore, the defendants accomplish the same result produced by complainant's invention, and have *substituted for his series of yielding spring points and index, a series of permanent or unyielding markers, and a yielding index,* retaining the other necessary elements *of a false dial, which shall receive the impressions, and distinctive keys corresponding to the several markers composing the series of markers.*

We contend that this change does not take defendants' device out of the scope and meaning of complainant's first claim. The mere transfer of the "*yielding*" element from the series of spring points or markers, to the opposing index or abutment cannot avoid complainant's first claim.

It is clear also that the defendants, in their device, produce the perforations, or its equivalent, on the paper dial, from the inside out, according to the second claim.

Judge Woodruff held that defendants' watchman's time-detector infringed both claims of Mr. Buerk's (the appellee's), patent. He says in his decision p. 50, of the record, as follows :

> "Is the defendants' detector an infringement? I think it is. The "only difference between it and the complainant's detector is that "instead of forcing points upward to perforate, the defendants force "the paper downward upon and to receive an impression from "stationary projections from the surface below. Both indent the "dial upward; one makes a perforation, the other an upward in-"dentation. I do not think an inventor can be robbed of the "fruits of his invention by such a variation, when the whole struc-"ture of his machine is in other respects the same.
>
> "Without deeming it necessary to discuss the subject more minutely "or fully, my conclusion is that the complainants' patent is valid, "and that the defendants infringe it.

"Let a decree be entered for the complainant, awarding an injunction "directing an account, etc."

Judge Woodruff was already familiar with the appellee's patent of 1865, having had it before him in Buerk *vs.* Valentine, and he says, in commencing his decision in this suit, page 49 of the Record:

"I have re-examined the decision heretofore made by me in Buerk *vs.* "Valentine, 9 Blatch., 479, so far as it bears upon the contest in "this suit. In that case the patents and the patented devices, in- "cluding the patent for the infringement of which this suit is "brought, are fully described."

The expert, Mr. McIntyre, who was examined for the defense, testifies as follows (see p. 45 of Record):

"17 × *Q*. Please examine the detector, Exhibit B, and state if its "construction admits of the production of either one or more than "one mark or indentation upon the false dial, by means of a single "key, that is to say, marks or indendations from either one or more "than one of the stationary dies employed therein by means of a "single operation of a single key?

"*A*. I have examined the detector marked Exhibit B, which is made "in accordance with Letters Patent to Anton Meyer, No. 117,442, "and to the construction and operation of which I have previously "alluded in my examination-in-chief. *In this detector one or more "stationary dies project from the face-plate, and have engraved or other- "wise produced on their projecting portions, figures, letters, or other "suitable characters, and immediately over said dies is arranged or "located a bridge or abutment, against which the key inserted and turned "beneath it, takes a bearing.*

"It is designed in this machine to have the keys so constructed "(where the number of stations in the beat exceeds the number of "the marking dies in the clock), with two or more projections, "that by the insertion and turning of a single key an impression "from two or more of the engraved dies may be simultaneously "made upon the under surface of the paper dial.

"18 × *Q*. Since the series of dies in the defendants' detector, Exhibit "B, are stationary, explain how the key, which forces the paper "dial against them, is enabled to be turned between the faces of

"said dies, and the bridge abutment which is arranged or located "over them, and at the same time force the paper against them, "so as to produce the desired impression?

"*A.* The bit of the key is supposed to be a little greater in width "than the distance between the *lowest point of bearing*, which it "takes on the under side of the bridge to which I have referred, "and the top surface of that part of the paper dial which is sup- "posed to lay on top of and in contact with the engraved surfaces "of the stationary dies. When the key is inserted and pressed "home, the lower edge of its bit naturally depresses that portion "of the paper dial which is not immediately over the stationary "projecting dies, *and as the key is subsequently turned round, the said "lower edge of its bit rides or travels along on the top surface of the "paper dial, and during its passsge over that part of the paper which "lays in contact with the stationary dies, the said bit is slightly forced "and held downwards by the confining bridge or abutment against "which its upper edge bears, and thus the paper is so compressed at that "point, which is immediately over the dies, as to induce to the proper "impression by the latter. To facilitate this requisite compression of "the paper, or this necessary pressing of the paper down on to the dies, "the under surface of the confining bridge or abutment is made slightly "inclined from a plane parallel with the surface of the paper dial, so "that as the bit of the key passes between the said inclined surface and "the paper, its bit will be pressed with a sort of wedging action, and "as an auxiliary to this pressing operation of the bit of the key or the "paper, the said bridge is adapted to slightly yield or spring, thus in- "ducing to greater perfection in the printing or embossing of the under "surface of the paper, and tending to avoid any rupture of the paper "during the said printing or embossing operation."*

Appellee's Invention not Anticipated.

The references relied upon to show that Mr. Buerk's patent of 1865 is anticipated have been already mentioned. They are—

I. Rowbotham's English Patent of 1852.

II. Nolet's French Patent of 1847.

III. Buckney's English Patent of 1862.

IV. Schwilgue's French Patent of 1847.

V. John Buerk's Patent of 1861.

I and II.

Rowbotham and Nolet.

These references are substantially the same, the only difference between them being that Rowbotham has added to the Nolet detector an ink or color reservoir placed in the watch-case, and provided with a cover. The stamp or puncheon is identically the same in both.

The Rowbotham and Nolet detectors do not contain any spring points or marking devices whatever. They contain a surface which is to receive a mark, but the marking device is merely a stamp which is thrust through an opening in the watch-case until it reaches the surface to be marked and then pulled out again. There are no internal spring points or projecting dies contained in Rowbotham's or Nolet's detectors, and no internal devices therein which are to be pressed against the paper dial by a key. These references therefore do not anticipate Mr. Buerk's invention.

The Rowbotham Patent was considered by Judge Woodruff in deciding the Valentine suit, where he says of it (see p. 35 of the Record):

> "Rowbotham's device was simply to print upon a revolving paper, "within the case of the watch, the impression of various type, "keys or stamps, dipped in colored ink from a reservoir in the "watch-case. The differing form of the keys or stamps at the suc- "cessive stations may have been useful in disclosing the time and "place where made, and so disclosing the fact and the time of his "visit to each station. This may have been more or less efficient "in accomplishing the purpose of a detector; but as a machine or "mechanical structure it was not like the plaintiff's. Making a "prior device, which will serve the like useful purpose, is not "necessarily anticipating an invention. Where the mechanical "means employed are different, and the mechanical result is dif- "ferent, one does not anticipate the other; if this were not so, an "inventor who had made a machine which would serve a useful "purpose would exclude all others from the right to a patent "for other mechanical devices, or combinations producing the "like useful result in other modes, or prducing a different "mechanical result which served the same purpose."

As the Nolet machine is the same as the Rowbotham, excepting the ink reservoir, what Judge Woodruff says about the Rowbotham machine applies to the Nolet machine.

III.

The Buckney Detector.

Buckney does not have any marking instruments in the detector. He uses transfer paper placed beneath a paper disk, and prints the shape of a type at the end of a key on the paper disk or dial through the agency of the transfer paper, the key, with a type formed on it, being the means used for bringing the transfer paper and the false paper dial into contact with each other.

IV.

Schwilgue's Detector.

The Schwilgue detector is evidently the machine referred to in the Valentine suit as being described in the *Polytechnisches Central Blatt* for 1865, where an obscure description of it was given. The more complete description given of it in the French patent produced in this suit, does not help the defense. Defendants' Exhibit No. 1, is a copy of Schwilgue's French patent; Exhibit No. 2 is a translation of it into English; Exhibit No. 4 is a model of Schwilgue's invention.

Defendant's expert, Mr. McIntyre, at the middle of p. 41 of the Record says of the Schwilgue detector:

> "*A.* In Exhibit No. 1, the patentee proposed to employ a *single point-*
> "*carrying lever*, in lieu of the gang used in complainant's machine
> "(and which had before complainant's invention, been used in the
> "machines where the paper was placed on a *drum* instead of on
> "the dial-plate), and move this *one point-carrying lever toward and*
> "*from the centre of the dial, to bring the point under* the different con-
> "centric annular dial spaces (which indicate the different stations),
> "and also upward and downward to perform the perforating opera-
> "tion, and he also proposed to have a *series of key-holes* in the case
> "or box, in order that the *wards* of the keys might be made dif-
> "ferent, while in complainant's machine only *one* key-hole is made

"in the case, and all the keys are adapted to enter this one hole, "and the previously known gang of points is used in lieu of the "*single perforating device* with a compound motion used in the old "French patent, Exhibit No. 1."

Mr. Faber du Faur has also described the machine made known in the Schwilgue patent. He says in answer 4, p. 47 of the Record.

"* * * I do not find in Exhibits Nos. 1, 2 and 4, or in either of "them, the combination of elements specified in the first claim of "complainant's patent, because, although I find a revolving dial "and a stationary index, I do not find spring points constructed "and operating substantially as and for the purpose set forth in "complainant's patent.

"The mechanism described in complainant's patent has a gang of "marking devices operated through one single key-hole, and ad- "mitting single marks, or combinations of marks being made by "the insertion and turning of different keys through this one "single key-hole, while the mechanism shown in Exhibits Nos. 1, "2 and 4, has but one single marking-point, with a motion in the "direction of the radius, and with a number of key-holes. By "the insertion of a key, but one mark can be made, the distance of "the mark from the centre being different for the different key- "holes or keys used. Combinations of marks cannot be made by "the insertion of one key.

"I do find in Exhibits 1, 2 and 4, the producing perforations on the "paper dial from the inside-out, as specified in complainant's "patent; but with the case open, such perforations could be made "from the lower side without taking off the paper dial, because "the projecting paper dial is not supported by a disk, as in com- "plainant's mechanism."

Judge Woodruff says in his opinion, with respect to the Schwilgue patent:

"It is true that a revolving dial had before been used; that John "Buerk used perforating points; that Rowbotham and Nolet used "a stamp rather than a key; that Schwilgue employed a single "point, adjustable to different positions of the varying positions of "the bits on the keys. As to all these, specific and important "differences from the complainant's detector might be pointed out. "For example: Apart from the plain difference between

"Schwilgue's and the complainant's in the manner of construction, "the mode in which the single point was controlled and shifted by "a species of lever or rotating arm, the fact that the dial was not "placed on the arbor of the watch movement, and other particulars, "which made it a far more cumbrous and inconvenient instrument "than the complainant's detector; besides all this, it had no such "capacity of variation by the combinations of marks or punctures "produced by the keys, which can be employed in the complain-"ant's machine, and enable the owner to make it serve for a very "great number of stations, if his business so requires.

It is clear, therefore, that the Schwilgue patent does not contain the first claim of complainant's invention, and that while the single perforating point does operate from below, yet the operation is such as to defeat the purpose the complainant has in view, namely, to prevent one from tampering with the false dial while it is in the machine, inasmuch as in Schwilgue's machine the false dial projects beyond the centre piece, so that one can perforate its projecting edge at pleasure. In complainant's invention, the purpose he had in view is attained by using a [redacted] dial plate which projects beyond the false dial, and supports it [redacted], so that its edge is not left exposed to be tampered with.

V.

John Buerk's Patent of 1861.

If it is asserted that the expired patent of John Buerk of 1861, (of which the appellee, Jacob E. Buerk, was the owner), shows and describes the invention secured by appellee's patent of 1865, we need only compare the two patents in order to overthrow the assertion.

The patent of 1865 uses a portable watch movement; a series of spring points; a series of keys, and a single key-hole for the series of keys, and in those features it is founded upon the John Buerk time-detector.

Among its changes, as compared with the John Buerk time-detector, are the following:

1. It uses the watch dial in place of John Buerk's drum.

2. It removes the hour and minute hands from the dial and arbor of the watch, and causes the dial to revolve with the arbor.

3. It places on said dial a paper dial.

4. It places the spring points radially with respect to the arbor, and under the dials.

5. It places a stationary index in line with and over the spring points, and above the dials.

Defendants' expert, Mr. McIntyre, top of p. 40 of Record, mentions some of the differences in construction between the detector of the appellee's patent of 1865 and that of the John Buerk Patent of 1861. He says:

> "From the specification of complainant's patent, and a comparison "of the machine therein shown and described, with what is "therein alluded to as having been previously patented—meaning John Buerk's Patent of 1861, I understand that the "invention and improvements made by the patentee consisted: "*First*, In substituting for the old drum and paper-strip placed "thereon a paper dial and stationary bridge or slotted rest "so arranged that the paper dial should pass under the sustaining bridge and index, and so placing the gang of perforating points as to puncture the protruding portion of the said dial "during its rotation; and *Second*, In the precise or peculiar "placement of the perforating points so that they will pass from "beneath outward through the paper, leaving a barb or burr on "the paper which cannot be counterfeited by pricking the paper "dial from without."

Exhibit No. 10 is a watchman's time-detector containing the drum and strip of graduated paper, as described in the John Buerk paten of 1861.

It is evident from the comparison which defendants' expert makes that appellee's machine of 1865 has done away with the *drum* of John Buerk, also with the *strip or zone of paper* surrounding the drum, also with the arrangement of a series of spring points *concentrically with the drum.*

Instead of these devices and arrangements of the machine of 1861, Jacob E. Buerk, the appellee, constructs a watch without the hour and minute hands; connects the dial with the watch arbor so that the dial revolves; puts a false paper graduated dial on the same arbor, and over the other

dial, the paper dial being of greater diameter than the other so as to overlap it at the circumference; arranges the spring points in a radial line to the arbor of the watch and under the dials; puts a stationary index over the spring points and over the outer edges of the dials, the index serving as a setting device or guide to enable the owner to set or adjust the false dial correctly in the machine; and provides that the index shall serves a a bridge or resisting piece to the action of the spring points and shall keep the paper dial in position when they are thrust upwards against the paper dial by the turning of the key the under side of the said bridge index.

No such devices or combination of devices are found in John Buerk's patent of 1861.

It was in view of the John Buerk patent of 1861, and of the other defenses set up by defendants on final hearing, that Judge Woodruff said in his opinion, pp. 49, 50:

> "The invention of the complainant first brought the combination of "the revolving dial on the watch-arbor, the complex and greatly "varying system of markers into immediate connection, in such "form of convenience and by such mechanical devices as are shown "in his detector.
>
> "It is claimed that the parts were old, and that his achievement "was aggregation merely. Not so. The very combination itself "required new devices to make the combination operative: and "the several parts, when combined, produce a result not before "produced by any one."

The decision of Judge Woodruff is in harmony with the facts and the law. The appellee, in making his invention, did not make a mere aggregation of old parts and use them in the same manner and combination they had been previously used. He built up a new construction, combining several elements together in a relation which they had never before sustained to each other, and so succeeded in producing a new combination and a more useful article.

This court properly holds (Hailes *vs.* Van Wormer, 20 Wallace), that merely bringing old devices into juxtaposition, and there allowing each to work out its own effect without the production of something novel, is not invention. But where new modes are employed of arranging or using what was before known, and effects are produced which were not produced

before in any machine, or not produced in that manner, or not produced so usefully, something more than aggregation has been produced. An invention has been produced.

In Many *vs.* Sizer, 1 Fisher, p, 21, Judge Sprague said:

"If neither of these wheels, taken separately, will defeat the plaintiff's patent, will they altogether? It is contended by the defendants that all the parts going to constitute the plaintiff's wheel were known before and developed in prior wheels.

"But if the patentee borrowed the idea of the different parts which go to constitute his wheel, and for the first time brought them together into one whole, and that whole is materially different from any whole that existed before, then he is the original and first inventor, and is entitled to a patent therefor."

A new combination of old elements is proper subject matter of Letters Patent, as Mr. Justice Clifford shows in Union Sugar Refinery *vs.* Matthiessen, 2 Fisher. 605.

This Court said in Seymour *vs.* Osborne, 11 Wall, 548:

"Particular changes may be made in the construction and operation of an old machine, so as to adapt it to a new and valuable result not known before, and to which the old machine had not been and could not be applied without those changes, and, under those circumstances, if the machine, as changed and modified, produces a new and useful result, it may be patented, and the patent will be upheld under existing laws." (Refers to 1 Clifford, 541; 1 Webster's Patent Cases, 207; Hindmarch on Patents, 95; 24 Howard, 166; Norman on Patents, 25.)

"Such a change in an old machine may consist merely of a new and useful combination of the several parts of which the old machine is composed, or it may consist of a material alteration or modification of one or more of the several devices which entered into its construction, and whether it be the one or the other, if the change of construction and operation actually adapts the machine to a new and valuable use not known before, and it actually produces a new and useful result, then a patent may be granted for the same, and it will be upheld as a patentable improvement." (Refers to 3 Washington Circuit Court, 196.)

"Improvements for which a patent may be granted must be new and "useful, within the meaning of the patent law, or the patent will "be void; but the requirement of the patent act in that respect is "satisfied if the combination is new and the machine is capable of "being beneficially used for the purpose for which it was designed, "as the law does not require that it should be of such general "utility as to supersede all other inventions in practice to accom- "plish the same object." (Refers to 1 Mason, 182; *id.*, 302; 1 "Blatchford, 372; 1 Mason, 447.)

The comparison made by the court is between the patented invention and the combination found in each prior machine. The court will not, in the first place, combine together all the old mechanisms, and, by the aid of what the patentee has done, suppose them to be working together as one mechanism, and then compare that creation with the patentee's invention. On the contrary, each prior machine will stand alone when compared with the patent on trial, and if it does not contain the patented invention, it does not anticipate the patent.

Respectfully submitted,

J. VAN SANTVOORD,

Counsel for Appellee.

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D. W. MIDD

SUPREME COURT of the UNITED STATES.

No. 185.

WILLIAM IMHAEUSER, APPELLANT,

vs.

JACOB E. BUERK.

PHILADELPHIA BAR ASSOCIATION

RECORD OF PATENT EXHIBITS.

New York:
EVENING POST STEAM PRESSES, 208 BROADWAY, COR. FULTON ST.
1879.

J. E. Buerk.

Time Detector.

No. 48,048. Patented Jun. 6, 1865.

Fig. 1.

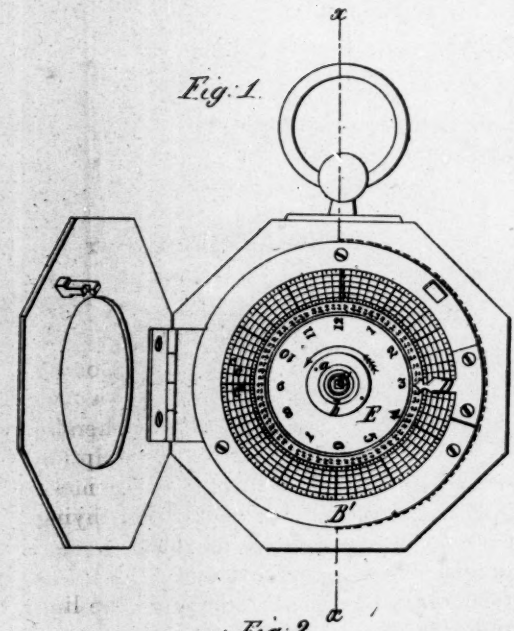


Fig. 2.

Fig. 3.

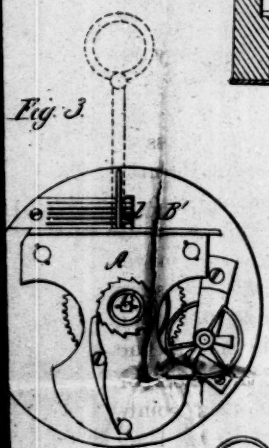
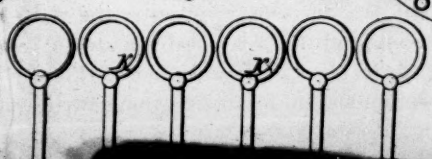


Fig. 4.

Fig. 5.



Inventor,
J. E. Buerk

Complainant's Exhibit A.

No. 48,048.

THE SCHEDULE REFERRED TO IN THESE LETTERS PATENT AND MAKING PART OF THE SAME.

To all whom it may concern:

Be it known that I, Jacob E. Buerk, of Boston, in the County of Suffolk and State of Massachusetts, have invented a new and improved Watchman's Time Detector, and I do hereby declare that the following is a full, clear and exact description thereof, which will enable others skilled in the art to make and use the same, reference being had to the accompanying drawings forming a part of this specification in which

Figure 1 represents a face view of this invention.

Figure 2 is a vertical central section of the same, the line *x x*, Figure 1, indicating the plane of section.

Figure 3 is an inverted plan of the movement.

Figure 4 is a face view of the same.

Figure 5 is a diagram representing the keys necessary for the operation of this invention.

Similar letters of reference indicate like parts.

This invention relates to an improvement in that class of watchman's time detectors on which a patent has been granted to John Buerk, January 1st, 1861. In that case a strip of paper is used stretched on the circumference of a drum to which a rotary motion is imparted by a clock or watch movement, and a series of spring points serve to perforate this strip according to the time when these points are operated by a series of keys of peculiar shape. On the strip are marked the hours, corresponding to hours on the dial of the clock or watch, and the time when one or more of the spring points have been actuated can be ascertained after the strip has been taken off. This construction necessitates a drum in addition to the ordinary clock or watch movement, whereby the expense of the mechanism of increased, and, furthermore, the

operation of applying and removing the strips of paper is tiresome and requires much care.

These difficulties are avoided by using a clock or watch with a stationary index and revolving dial. On this revolving dial are fastened removable dials of paper or other suitable material, with a series of circles corresponding to the positions of the spring points, and these spring points are concealed under the stationary index. By inserting one of the keys and turning the same round the paper dial is pierced by one or more of the spring points, and the time when this takes place can be ascertained by examining said dial when the watch or clock is opened. The perforations in the paper dial are made from below under the stationary hand, leaving a slight barb on the upper surface, and a similar perforation cannot be produced even if the watch or clock be opened except if the paper dial is taken off.

A represents a clock or watch movement made in the ordinary manner, and provided with a revolving dial, *B*, which is mounted on the center shaft, *C*, in place of the ordinary hands, and which rotates under the stationary index, *D*. The dial is marked with figures from 1 to 12, and it revolves once in 12 hours. From this dial project two or more points, *a*, which serve to retain a false dial, *E*, of paper or other suitable material, and this dial is held in place by a disk, *b*, which slips over the center shaft and which is provided with little holes or sockets to correspond in number and position to the points *a*. The paper dial, *E*, is marked with figures from 1 to 12, like the main dial, and with a series of concentric rings, *c*, corresponding in number to the stations in the beat. The paper dial shown in the drawing is marked with six rings, to correspond to six different stations.

The spaces between the rings, *c*, correspond in number and position to a series of spring points, *d*, the points of which are situated under the index *D*, and made to project through a slot in the dial plate *B'*. When left to follow their own elasticity, said spring points do not reach above the surface of the dial plate, but they are so arranged that one or more of them can be forced up simultaneously and made to penetrate the paper dial, different keys, *K*, being provided, each of which serves to raise one of said spring points, or of a combination of two or more of them.

One of these keys is intended to be fastened by a chain or other suitable means to a post or other fixed part on each station in the beat of the watchman, and the watchman carries the watch. On arriving at a station he inserts the key and by turning the same a perforation is produced which gives a record of the time when the watchman has visited the station. The watch, of course, is intended to be locked so that the watchman cannot get at the paper dial in order to produce fraudulent perforations to cover a neglect of his duty, and the keys, simple as they look, are so shaped that they cannot easily be imitated, for the slightest difference in the height or position of the bit would produce a different action.

Having thus described my invention,

I claim as new and desire to secure by Letters Patent;

1st. The use of a false revolving dial, *E*, in combination with the stationary index, *D*, and spring points, *d*, constructed and operating substantially as and for the purpose set forth.

2d. Producing the perforations on the paper dial, or its equivalent, from the inside out instead of from the outside in as before.

J. E. BUERK.

Witnesses:

J. H. LOW.

A. MEISEL.

Fig: 3

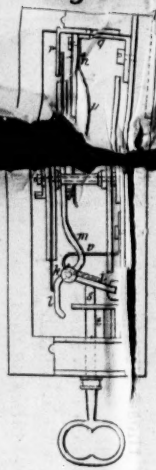


Fig: 1.

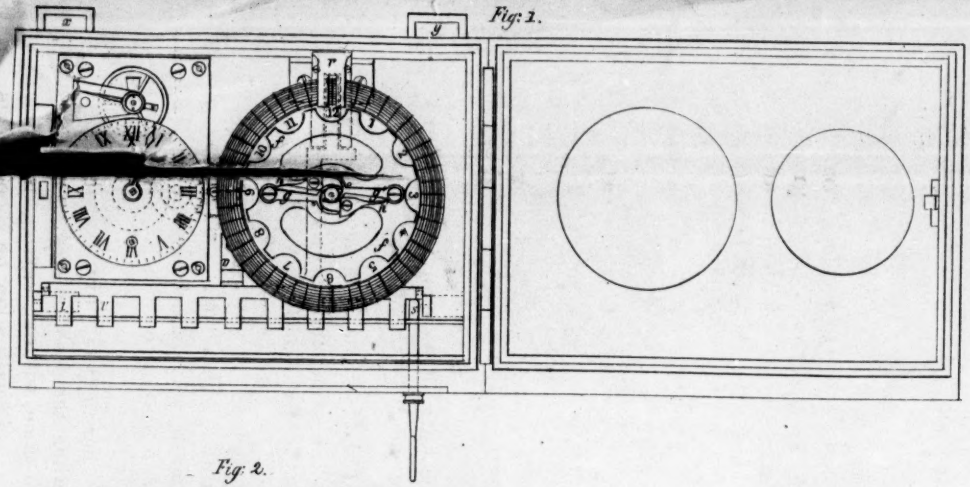


Fig: 2.

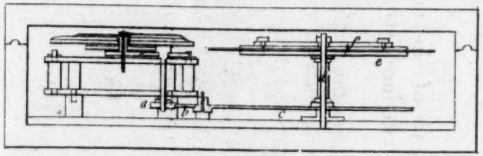


Fig: 5.

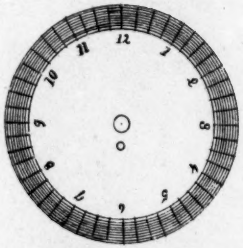


Fig: 4.

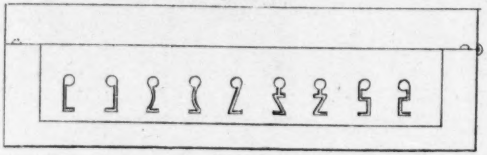


Exhibit No. 2.

No. 18,063.

Copy of Letters Patent for an instrument called Portable Watchman's Time Detector (marqueur portatif) granted to Messrs. Schwilgué, father (Jean Baptiste), and son (Charles Maximilien), mechanicians, in Strassbourg (lower Rhine), on April 28, 1847.

Description.

This detector is fit to indicate not only the moment, but also the station, where the attendance of the watchman has to be proved.

The simple composition of this portable detector presents several advantages over all instruments of this kind constructed, till now.

Indeed, instead of the necessity of as many detectors as there are stations, one instrument is sufficient:

1st. To give assurance that the watchman ordered to look after the different stations in the same building, or to watch several separated buildings, has duly done his duty.

2nd. To show exactly the moment at which the watchman has been in the different localities. This detector has also the advantage to save to the master of the establishments the trouble of visiting himself each station confided to the vigilance of the watchman.

For making sure if this person has duly executed the ordered patrol, each time when the watchman presents the detector to his employer, the same, without leaving his office, can open the box of the instrument with a key he keeps in his possession, and may then find out whether the patrol has been completely effectuated. All these advantages are secured by the following new combinations.

The box of the portable detector presents a certain number of different locks, to each of which belongs a special key. The keys, which are in the same number as there are stations to be

controlled, are suspended regularly on a chain in such a manner that they cannot be taken away unless by breaking the chain or the key. As the watchman cannot fetch the different keys for putting them successively into the locks of the detector, he is obliged to carry this instrument to each station, where a key is fastened, for presenting the lock to the corresponding key. It is sufficient to turn once each key in its corresponding lock ; by thus turning, a point, or perforating pin, in the interior part of the detector, corresponding directly with a paper dial, is put in action.

By a special disposition, each key displaces the pin, removing it more or less from the centre of the printed paper dial, which, owing to the movement of the watch, turns round. Therefore, the perforations made on the paper dial by this pin will easily show at what place and what moment the controlling has been performed.

This detector could also be used for recording the moment when a locomotive or a train is passing by indicating the arrival and departure of the locomotive on each station of the railroad. For such a purpose only the different keys of the detector have to be distributed amongst the different stations of the road.

Explication of the Drawing.

Fig. 1. View of the complete instrument in its box, which is represented opened.

Fig. 2. View of the instrument cut off longitudinally by a line passing through the centre of the watch-dial and through the centre of the paper dial.

Fig. 3. View of the instrument, cut off transversely, taken from the edge of the box on the side of the hinges.

Fig. 4. Outside view of the the box, showing the side, where the keys are put in.

Fig. 5. Drawing of a printed paper dial..

The mechanism of this detector is composed of two different parts. The first comprises the watch movement, and the second the controlling system (the producing of perforations).

We will not enter more particularly into the details of the mechanism of the movement as it can be constructed like the

watch movements, with an ordinary (spindle) movement, or a cylinder (lever) movement.

Besides these movements are subject to different modifications. We will only remark, that the pivot of the minute wheel passes through the two plates for carrying another pivot *a*, which catches an intermediate wheel *b*, which conducts the wheel *c* on a tenon which is carried by the metal plate on which the whole mechanism is affixed.

This wheel makes a rotation in twelve or twenty-four hours, as may be desired. The drawing represents the first case, that is to say, the detector has a controlling system of twelve hours.

The tube *d* of this wheel carries a disk *e* on which the paper dial is fastened Fig. 5.

This dial has a hole in the centre, and other holes which enter into pins, so that the numbers printed on the paper dial respond exactly to those of the dial.

This paper dial put in its place, as described, is covered and maintained by a circular plate *f* cut out, as shown by Fig. 1.

The same pins which have passed through the paper dial enter also into this plate, which has on its top two forked pieces *gg*, which are pressed by little springs *hh*.

The outward branch of each fork is formed like a paw, while the other branch has only the necessary elevation for entering into a notch turned into the upper part of the tube *d*, thus by pressing those two paws for approaching them, the two other branches withdraw, and get detached from the notch allowing to remove the plate for changing the perforated dial (paper dial) for another, and to replace again the plate for maintaining the paper dial in such a way that it turns round with the wheel, which conducts the whole system.

Fig. 3 represents a piece, *i*, whose length responds to all keyholes. This piece is movable at its base near the ground plate, and can describe an angular movement.

This piece carries on its superior part another piece, *k*, of the same length, which is also movable at the extremity of the piece *i*. This piece, *k*, carries on the side of the locks as many branches, *l l'*, &c., as there are keys which branches resemble touches. On the other side this piece, *k*, carries a long branch, *m n*, which has attached to its extremity the perforated *n*; in the middle it carries a talon, *o*, which is pressed by a spring,

p, fixed at a double angled piece, *q*, consolidated on the inferior plate.

To this piece is adapted another angle, *r*, with a longitudinal hole for the passage of the perforator. This last piece is fixed a little over the paper dial, so that this paper might not get wrinkled whenever it is reached by the perforating pin.

On the box are fastened two buckles, *x* and *y*, at which can be fixed straps, so that the watchman may carry the instrument like a hunting bag.

Action of the Perforating Pin.

The keys, all of a different form, have more or less long extremities, *s*, so that entering into their locks, these extremities displace the piece *i*, at a greater or smaller angle; this angular movement forces the pivot to remove farther and farther from the centre of the paper dial, responding to the different concentrical circles which are printed on the paper.

By turning the key once, the bolt *t* meets the corresponding touch, raising it, which causes the pivot to sink, and by this movement the piece *o* strains the spring *p*, but at the moment, when the key is turned half round, the bolt releases the touch and the spring sets the perforating pin, *a*, going from below, upwards. In the same time the feeble spring, *u*, disengages the perforating pin from the paper, by retiring the key the spring *v* carries back the point (pin) to the first concentrical circle of the paper dial. In the same way each key disposes the pin to respond to another circle of the paper dial.

We have not drawn the interior arrangements of the locks, as they can be varied infinitely.

We remark that even a limited quantity of locks applied to one of those instruments could serve to control a greater number of places. For this purpose it is only necessary to repeat the same series of keys, distributing them properly in the different localities.

We will also remark that instead of suspending the keys on chains, other means could be employed, suggested by the circumstances and the localities.

It is easy to see that the dimensions and forms of the instrument, as well as the species and quantity of the locks and

keys can be greatly varied. Regarding the peculiarity of this portable detector, it consists by enabling any one to control several localities by means of only one instrument.

That the above is annexed to the Letters Patent for 15 years, granted April 28th, 1847, to Mess. Schwilgué, father and son, attests.

For the Minister and by delegation, the Councillor of State, the Secretary General.

CAMILLE PAGANEL.

Paris, July 10th, 1847.

FIG. 1.

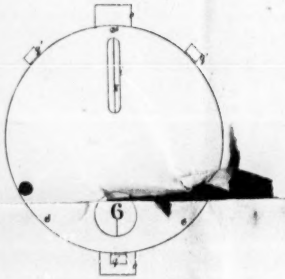


FIG. 2.

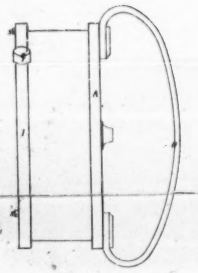


FIG. 3.

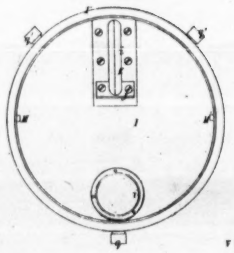


FIG. 6.

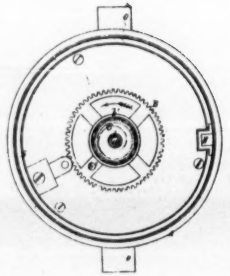


FIG. 4.

FIG. 7.

FIG. 9.

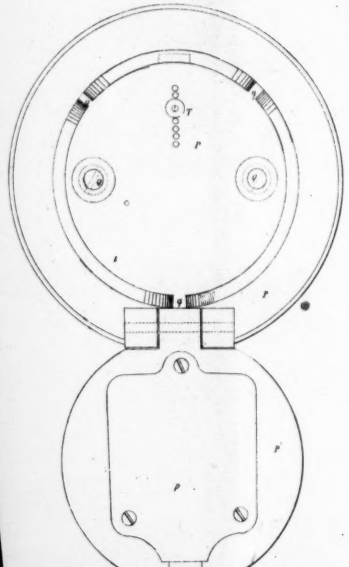


FIG. 10.

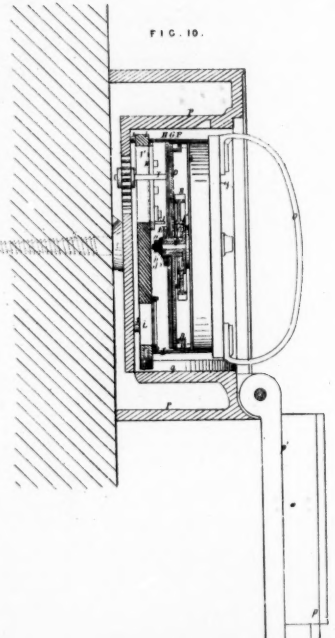


FIG. 8.

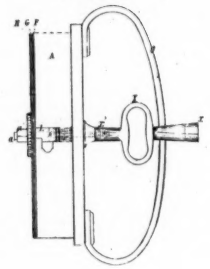
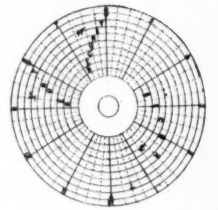


FIG. 5.



MONTRE CONTROLEUR, PAR M. NOLET.

Fig. 1.

Fig. 2.

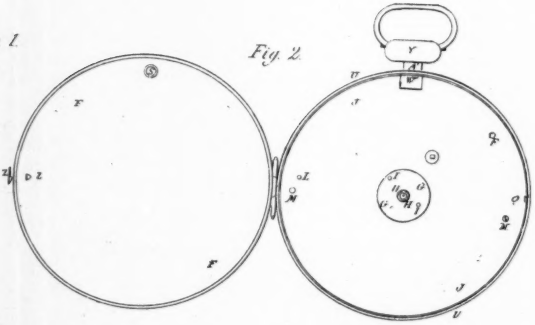


Fig. 3.

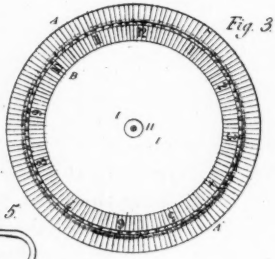


Fig. 4.

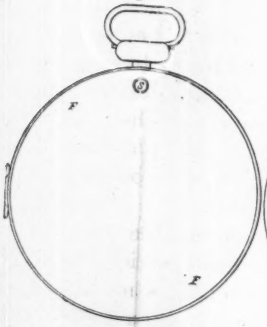


Fig. 5.

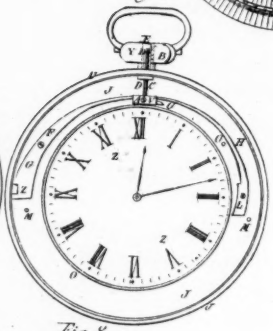


Fig. 7.

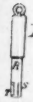


Fig. 6.

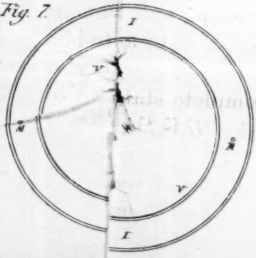


Fig. 8.

Exhibit No. 3.

LETTERS PATENT OF MAY 5, 1847. DATED JULY 8, 1847.

To Mr. Nolet, of Ghent:

FOR A TIME DETECTOR.

This clock is intended to control all the movements of watchmen and wardens in establishments which have to be actively and incessantly watched. Every step of the watchman or warden while performing his duties can be closely followed. In order to obtain this result all that is required is to fix against the walls of the various places under his supervision a puncheon fastened in such a manner that it cannot be removed, which is to serve the watchman for the purpose of marking the hour and minute of each beat, on the dial inside the clock carried by him.

All fraud, every sort of subterfuge on his part thus becomes altogether impossible, for it is not within his power to stop, slacken or to hinder the movement of the clock, which does not vary a particle, and after the watchman has finished his rounds, the movable dial fastened on the pins of the platform will show the rounds made from hour to hour, and from one minute to another.

This system, as may be supposed, is easily susceptible of the most extensive application, and may be rendered serviceable in controlling every kind of supervision, whether the same applies to custom house officers or policemen while on their rounds. It is, indeed, intended to watch all those whose duty it is to perform a close service of supervision, and who are thus enabled to render to their superiors an account as to how they employed their time.

The cut 1 represents the clock in a complete state. The marking is performed by the box, of which *UU* is the ring or rim.

II is the frame for the glass, *VV*, which is placed inside the rim *UU*. *FF* is a cover with hinges, which is also placed with-

in the rim *UU*, and which is locked by means of a key which passes through the pendant *Y*, as will be perceived in cut 5.

JJ is a round plate which is supported in its circumference on an edge of the rim *UU*.

OO is a ring on the plate *JJ*, in which is encased the plate *XX* of the movement.

MM are two screws which fasten the plate *JJ* and the frame *II* on the rim *UU*.

S is a little sliding socket attached to the cover *FF*.

AA is a watch movement.

XX, *QQ*, are the two plates.

ZZ is the dial.

R is the pinion of the central wheel of the watch which is drilled through its centre.

B is a pinion, the stem *P* of which traverses the hollow of the pinion *R* and is held in its place by friction, and thus receives the indicative movement of the watch. The other end of the stem *P* of the pinion *B* traverses freely the socket *HH* of the wheel *E*. The wheel *C* catches the pinion *B*; the pinion *D*, fixed on the wheel *C*, pitches into the wheel *E*.

GG is a little platform fixed on the socket *HH* of the wheel *E*, and turns on the level of the plate *JJ*.

II are the two pins fixed on the platform *GG*.

By this arrangement the platform *GG* describes regularly the same circle as the hand which shows the hours on the dial *ZZ*.

The figure 2 represents the watch with the cover *FF* open. Some pieces of the cut 1 are reproduced in this one.

The cut 3 is a paper dial *B*, the diameter of which is *AA*. The marks *II* and *H* correspond to those of the platform *GG*, figure 2, in such a manner that in thus fixing the dial *B* on the platform *GG* it follows regularly the movement of the latter, and performs, as it has been indicated above, a circuit in twelve hours.

The point *A* marked on a rim *UU*, indicates the hour on the dial *B*, in accordance with the one marked by the hands on the dial *ZZ*, Fig. 1.

The square *W*, Fig. 2, is a piece encased in the plate *JJ*, in order to facilitate the marking, which will be explained further on. On closing, therefore, the cover, from *FF*, the socket *S* appears in front of *W*, and the hook *Z* is lowered

through the passage *Q* beneath the plate *JJ* of the dial *B*, thus being shut up under the cover *FF*, and following, as has been said, regularly the hour of the watch.

The cut 4 represents the clock when closed. On marking, at chosen intervals, a number or some other sign on the dial *B* by the entrance of the socket *S*, these numbers are faithfully reproduced on the hour and minute of the dial *B*, and will, therefore, indicate the precise moment when the marking took place.

The marking is made by means of a puncheon, shaped as shown in Fig. 8. We may describe the same as follows:

J is a tube.

K is a little tube fixed inside in *J*.

L is a puncheon, bearing at its end *D* a letter in relief, and which freely traverses the tube *K*.

N is a rest for the puncheon *L*, upon which presses the steel spring *P*.

M is a pin fixed on the piece *N*, circulating in the groove *O* of the pipe *J* in such a manner that the puncheon *L* enters into the pipe *K* by pressure, and returns to its original position by action of the spring *P*.

Q is a little heel attached to the puncheon *L*, and which guides the puncheon in the socket *S* (Fig. 4), in order to always mark the letter which it carries straight to the dial *B*.

This impression is only produced by the power of spring *P*, for the tube *K* rejoins the socket *S* of the cover *FF*, and consequently the power of spring *P* is the only one still operating. For the purposes of the service, there is riveted at the various posts which the watchman is obliged to visit, a puncheon (Fig. 8), the chain of which, *I*, consists of soldered links, and cannot be unhooked.

These puncheons are all marked with a different letter, and the man on duty is compelled, in accordance with his instructions, to visit the posts, in order to leave on his clock the mark of the puncheon which he there encounters; the hour when he visited the spot thus being indicated on the movable dial *B*, to a minute. This control may be repeated from minute to minute, during twelve hours, and when this time has been gotten through, the dial is renewed.

Fig. 5 shows the clock when seen from the side of the

dial *ZZ*. The frame II, which we have observed at Fig. 1, is removed, in order to freely exhibit the working of the lock.

MM are the holes of the screws, and *JJ* the plate of Fig. 1.

It will thus be seen that on the back of the plate *JJ*, the rim *UU* and the ring *OO*, the lock is found closed in this position. The hook *Z* of the cover *FF* is picked up by the piece *GG* which balances on the screw *F;* the spring *H*, fastened by the screw *L* on the plate *JJ*, presses down upon the balance *GG*, and the screw-tap *VV* is fixed to the balance *GG* by the screw *A*.

DD is a socket screw tapped on the screw-tap *VV*.

C is a rest for the socket *DD*, leaning against the rim *UU*, and pressing the screw-tap *VV* against the ring *OO*.

B is a little heel on the socket *DD*.

E is a hole in the pendant *Y*, and cylindrical to the base, where it again rejoins the rim *UU*.

This lock is opened by the key (Fig. 7), of which *R* is a little tube.

S is a screw furrow fastened inside of *R*, on a level with the groove *T*.

Thus, by introducing the key into the hole *F* of the pendant *Y*, the extremity of *VV*, which is smooth up to the level of the socket, enters freely into the screw furrow *S*.

The groove *T* has taken the heel *D*. *S* is thus found to be on the socket *DD*, and the extremity of the tube *R* at the distance of one millimeter from the bottom of the hole *E*, in such a manner that on the first turn of the key the socket *DD* lowers, and discloses the screw-tap *VV*, which is inserted into the screw furrow *S* of the key.

The end of the key thus having by the first turn, arrived at the bottom of the hole *E*, the following turns of the key cause the socket *DD* to lower in the same proportion as the screw-tap *VV* slides back into the tube *R* of the key, and thus draws toward it the balance *GG*, which detaches at the hook *Z*, and as the lock is open the key cannot be withdrawn without closing it again.

Fig. 2

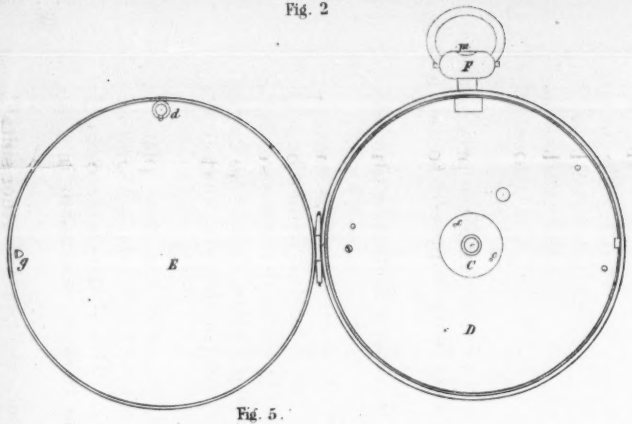


Fig. 3.

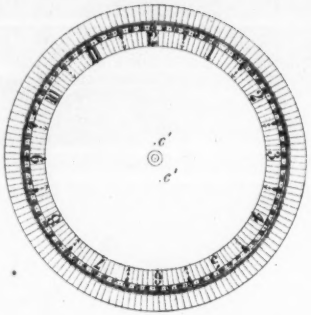


Fig. 5.

Fig 6.

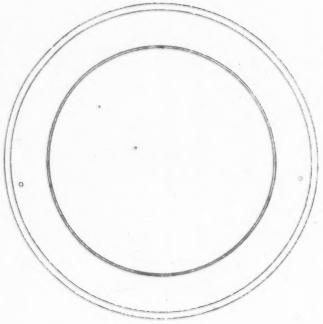
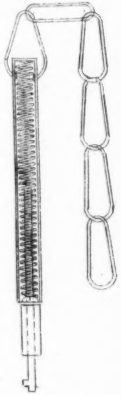


Fig 7

Fig 8.



FULL SIZE

Exhibit No. 5.

English Letters Patent, granted John Rowbotham, dated December 4, 1852, No. 957.

Improvement in Time Keeping, etc.

The invention consists in the application to any of the ordinary movements of watches or clocks of certain additional mechanism, along with other accessories appertaining thereto, for the purpose of indicating the due attendance on duty of watchmen, and other persons having charge of property, and of detecting where such duty has been neglected. The nature as well as the mode of carrying out the invention will be readily understood by reference to the annexed drawing, which I shall proceed to describe.

Figure 1, is a side view of the watch, showing the principal parts of the interior, the outer case being supposed to be in section.

A A is the dial, and *B B* the frame containing the ordinary watch movement.

This movement may be of any of the ordinary constructions; but an additional mechanism must be applied (either by making use of the arbor of the hour pinion for that purpose, or by other intermediate means) by which a plate, *C*, may be turned round with a motion precisely corresponding with that of the hour hand.

This plate is flush, or nearly so, with the back plate *D*, which covers the entire movement, and it is supplied with two or more small projecting pins *c, c*. This is shown more clearly in figure 2, which represents the back of the watch in plan, with the case open.

Figure 3 is a loose dial of paper, card board or other suitable material, marked with figures, in the same manner as the dial *A*, and pierced with holes *c' c'* corresponding with the pins *c, c*, in the plate *C*. Thus, if the loose dial be laid on the back of the plate *D*, the pins projecting through their holes, it will have a movement imparted to it corresponding to the move-

Fig. 1.

Fig. 2

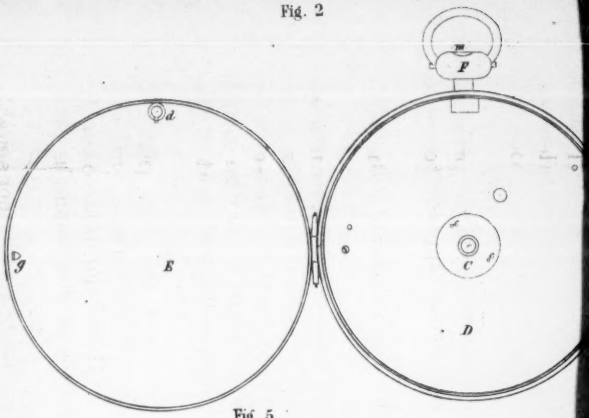


Fig 4

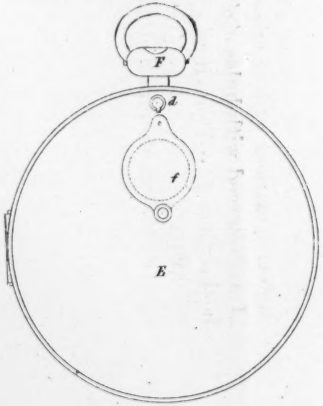


Fig. 5.

FULL SIZE

ment of the hour hand, turning once around in twelve hours.

E, figure 2, is the exterior case or back of the watch, which is capable of being shut down and securely locked over the loose dial, at the same time allowing the latter to turn round.

Figure 4 represents the back of the watch, with the case shut down. It will be observed that it is furnished with a small hole *d*, giving access to the card or dial, in the neighborhood of the figures marked thereon. This hole is for the insertion of the key or stamp, figure 8, as will be afterwards explained.

F is a shallow reservoir, containing printer's ink, or other coloring matter. This may be placed at any part of the watch, and it is shown in the drawing with a cover, which slides laterally over it.

The mode in which the case *E* is securely locked, and opened when required, is the following:

G is a snap or hook, which, when the case is shut, passes through the plate *D*, and is detained or released, at option, by one end of the lever *H;* this part of the mechanism being shown more fully in figure 5, which is a plan of the front of the watch, but with the case and glass shown separately, at figure 6, removed.

The lever *H* is pressed upon by the spring *I*, so as to detain the snap *G*, when permitted; and the whole is acted upon by the screw *J*, the drawing up of which releases the snap.

The screw *J* passes up through a hole in the neck or handle *F*, and is there furnished with a bush or nut *K*, the turning of which lowers or raises the screw.

To this nut is fitted a key, figure 7, which has a slot corresponding to a heel on the nut, so that by inserting it in the hole *M*, and turning it round, in either direction, the case may be locked or unlocked.

In order, however, to give certainty to the relocking of the case after the insertion of a card or dial, the following contrivance is made use of.

It will be observed that the extremity of the screw *J* projects a little beyond the top of the nut *K*; now, at the end of the barrel of the key, fitting the nut, is a small hole, topped with a thread, corresponding with that of the screw, and the barrel is contrived of such a length that the projecting part of

the screw shall enter the hole, before the nut begins to turn round. Thus, when the nut has been subsequently turned to such an extent as to unlock the case it will be seen that it will now be impossible to withdraw the key without turning it back to an equal extent, and thus relocking the case. The general mechanical arrangement of the invention being thus rendered clear, the mode of application to the purpose intended will be readily understood.

Supposing the appointed duties of a watchman require him to visit a given number of rooms at successive given hours, in each room must be suspended a stamp, figure 8, chained and securely locked in any convenient and safe position, each stamp being marked with a distinct letter. The watch being supplied with a paper dial, and having the case locked, is now delivered to him, in order to carry with him in his rounds of inspection.

As he visits each room at the appointed times he takes the respective stamps, dips them in the ink or color reservoir, and stamps the card or loose dial through the hole *d*. By this means when the card is removed from the casing, the species, number, and position of the letters marked thereon, will furnish a complete index of the watchman's due performance of his duty, and the omission of any letter or letters will point out his corresponding neglect.

It is obvious that this system may be employed to control periodical inspection, either for the protection of property or for any purpose whatever. In some instances it may be found more convenient, instead of using a portable watch, as above described, to employ one or more stationary time-pieces. In this case also the same description of card or loose dial may be applied, but the stamp or stamps must either be rendered portable or must be suspended within reach of the time-piece.

Having now fully ascertained and described the nature of the invention communicated to me, and in what manner the same is to be performed, I would have it understood that what I claim as new, is:

First.—The use of portable detective watches or time-pieces.

Secondly.—The mechanism which renders them detective, namely, the revolving loose dial, the stamp, and the mode of locking the case.

Thirdly.—The revolving loose dial and stamp applied to stationary time-pieces; the whole as described.

In witness whereof, I, the said John Rowbotham, have hereunto set my hand and seal, this second day of June, in the year of our Lord, one thousand eight hundred and fifty-three.

JOHN ROWBOTHAM. [L. S.]

Signed by the within named John Rowbotham in the presence of

S. EDWARDS,
A Master Extraordinary in Chancery.

Exhibit No. 6.

A. D. 1862, 12 May.—No. 1,431.

PORTABLE TELL-TALE TIME-KEEPERS.

Letters Patent to Thomas Buckney, of Peckham, Rye, in the County of Surrey, gentleman, for the invention of Improvements in portable Tell-tale Time-keepers, "A communication from abroad by Armand Francois Collin," residing at Paris, in the empire of France. Sealed the 24th October, 1862, and dated the 12th May, 1862.

Provisional specification left by the said Thomas Buckney, of Peckham, at the office of the Commissioners of Patents, with his petition, on the 12th May, 1862.

1. Thomas Buckney, of Peckham, Rye, in the County of Surrey, gentleman, do hereby declare the nature of the said invention for improvements in portable Tell-tale Time-keepers, to be as follows:

This invention has reference to that class of instruments called tell-tales, which are employed to ascertain the due attendance of watchmen or others at different localities which it is their duty to visit at certain intervals of time. A portable instrument has already been employed for this purpose, consisting of an ordinary watch, at the back of which, behind the casing, a paper disc was fixed upon pins, attached to a small central metal disc, receiving rotary motion from the clockwork, and which, therefore, imparted rotary motion to the paper disc; this latter has divisions indicating the hours marked upon its circumference, and a small hole was made in the casing at the circumference, through which a type chained to the wall or other fixed object at the different localities, could be inserted; this type was dipped by the watchman or other person into a small reservoir of printers' ink attached to the watch casing, and was then inserted through the hole in the casing, and impressed upon the before mentioned paper disc, which

thus indicated the time when the person had visited the particular locality to which the particular type belonged.

The present invention has for its object the construction of an apparatus which shall offer both greater security from fraud, as also greater compactness and facility of manipulation, than the above described arrangement, and consists, firstly, in constructing a portable instrument consisting of a strong casing containing the mechanism of an ordinary watch, but without the dial or hands of the same. The front of the casing is removable, and a small distance below it is a metal disc of the same size as the casing, which disc receives a rotary motion from the clockwork to which it is connected, in such a manner by means of a spring, that if it is attempted to turn it forward it will return immediately to its original position; it has projecting from its centre a stud with a screw thread cut upon it. On this disc is placed, firstly, a disc of card board or other suitable material for forming a pad; secondly, a disc of black or colored transfer paper; and thirdly, upon this, a paper disc having upon its front surface, divisions, indicating the hours marked upon the circumference whilst at the back, where it is in contact with the transfer paper, it has corresponding radial divisions, and also circular concentric divisions marked upon it. Each of the beforementioned discs has a hole in its centre, through which the stud of the metal disc passes, and when they are all in place, as above described, a flat nut is screwed upon this stud, by which the paper discs are securely fixed to the metal disc, and are consequently caused to move round with the same. In the removable front part of the casing are formed two apertures situated diametrically opposite each other; the one aperture is by preference made circular, and is covered with glass, and serves to observe the time indicated by the numbered divisions on the paper disc as they pass this aperture; the second aperture is a radial slit of sufficient width to allow a type to pass through, and is covered inside by a piece of india rubber or cloth having a slit in it. A small guard is fixed at the bottom of the slit, inside the cover, which prevents the paper disc being tampered with by the insertion of any instrument for the purpose of unscrewing the nut that secures the same. The front of the casing fits over the other part like the cover of a box, and is secured to its place by a suitable lock.

To the back of the casing is fixed a strong handle of leather or other suitable material.

Secondly, this invention consists in fixing in any convenient manner, at each of the localities where the watchman or other person is required to visit, a box or case of metal, or other suitable material of a corresponding internal size to the external diameter of the before described instrument, which box has a lid or door to it, capable of being locked. Inside this box, at the back of the same, a small metal type is fixed, projecting out in a horizontal direction. The mode of operation is as follows:

At the appointed time the watchman, holding the before described time-piece by the handle, inserts the same into the box, the exact required position of the time-piece inside the box being insured by studs fixed to the circumference of the time-piece, passing down grooves formed in the sides of the box. In pushing the time-piece forward, the fixed type projecting from the end of the box will pass through the slide in the cover of the time-piece, and will print its letter, number or character by means of the before mentioned transfer paper, on to the back of that portion of the paper disc which is then in front of the slit.

The type in each box is fixed at a different radial distance from the centre, and is consequently imprinted not only at a different circumferential position, but also at a different radial distance upon the back of the paper disc, which, when removed from the time-keeper, will consequently indicate by the position of the imprint of the various types upon the radial and annular divisions upon the back, the particular time at which the watchman or other person has visited each individual locality.

The letters in the boxes of the various stations may be arranged in such a manner that they would form a particular word, printed in a peculiarly curved direction when the various stations had been visited in correct rotation, and at the proper appointed times, and the word may be changed by altering the type without the knowledge of the watchman or other person, thus rendering it exceedingly difficult, if not impossible, for him to print the proper word in the proper curved direction upon the paper disc without visiting the various localities for this purpose, even supposing he had possessed himself of *facsimiles* of the various types in the different boxes.

A fresh paper disc is placed in the time-piece every day, or at any other interval of time when it is required to examine the duty performed, but the same discs of transfer paper will serve a number of times.

Specification in pursuance of the condition of the Letters Patent filed by the said Thomas Buckney, in the great seal Patent Office, of the 11th November, 1862.

To all to whom these presents shall come, I, Thomas Buckney, of Peckham Rye, in the County of Surrey, Gentleman, send *Greeting :*

Whereas, Her Most Excellent Majesty, Queen Victoria, by Her Letters Patent, bearing date the twelfth day of May, in the year of our Lord one thousand eight hundred and sixty-two, in the twenty-fifth year of her reign, did for herself, her heirs and successors, give and grant unto me, the said Thomas Buckney, her special license, that I, the said Thomas Buckney, my executors, administrators and assigns, should at any time to time agree with, and no others from time to time, and at all times thereafter during the term therein expressed, should and lawfully might make use, exercise, and vend, within the United Kingdom of Great Britain and Ireland, the Channel Islands, and Isle of Man, an invention for improvements in Portable Tell-Tale Time-Keepers, a communication to me from abroad, by Armand Francois Collin, residing at Paris, in the Empire of France, upon the condition (amongst others), that I, the said Thomas Buckney, my executors or administrators, by an instrument in writing under my, or their, or one of their hands and seals, should particularly describe and ascertain the nature of the said invention, and in what manner the same was to be performed, and cause the same to be filed in the great seal Patent Office within six calendar months next, and immediately after the date of the said Letters Patent.

Now know ye that I, the said Thomas Buckney, do hereby declare the nature of the said invention, and in what manner the same is to be performed, to be particularly described and ascertained in and by the following statement thereof, reference

being had to the accompanying drawing, and to the figures and letters marked thereon; that is to say: This invention has reference to that class of instruments called "tell-tales," which are employed to ascertain the due attendance of watchmen, or others at different localities, which it is their duty to visit at certain intervals of time.

A portable instrument has already been employed for this purpose, consisting of an ordinary watch, at the back of which behind the casing, a paper disc was fixed upon pins, attached to a small central metal disc, receiving rotary motion from the clockwork, and which therefore imparted rotary motion to the paper disc; this latter had divisions indicating the hours, marked upon its circumference, and a small hole was made in the casing at the circumference, through which a type chained to the wall or other fixed object at the different localities could be inserted. This type was dipped by the watchman or other person, into a small reservoir of printer's ink attached to the watch casing, and was then inserted through the hole in the casing, and impressed upon the before-mentioned paper disc, which thus indicated the time when the person had visited the particular locality, to which the particular type belonged.

The present invention has for its object the construction of an apparatus which shall offer both greater security from fraud, as also greater compactness and facility of manipulation than the above described arrangement, and consists, firstly, in constructing a portable instrument, consisting of a strong casing containing the mechanism of an ordinary watch, but without the dial or hands of the same. The front of the casing is removable, and at a small distance below it, is a metal disc of the same size as the casing, which disc receives a rotary motion from the clockwork, to which it is connected in such a manner, by means of a spring, that if it is attempted to turn it forward, it will return immediately to its original position; it has projecting from its centre a stud with a screwthread cut upon it. On this disc is placed, firstly, a disc of card board, or other suitable material for forming a pad; secondly, a disc of black or colored transfer paper; and thirdly, upon this a paper disc, having upon its front surface divisions indicating the hours marked upon the circumference, whilst at the back, where it is in contact with the transfer paper, it has corresponding radial divisions, and also circular concentric divisions marked

upon it. Each of the before mentioned discs has a hole in its centre, through which the stud of the metal disc passes, and when they are all in place as above described, a flat nut is screwed upon this stud, by which the paper discs are securely fixed to the metal disc, and are consequently caused to move round with the same. In the movable front part of the casing are formed two apertures situated diametrically opposite each other, the one aperture is by preference made circular, and is covered with glass, and serves to observe the time indicated by the numbered divisions on the paper disc, as they pass this aperture. The second aperture is a radial slit of sufficient width to allow a type to pass through, and is covered inside by a piece of india-rubber or cloth, having a slit in it. A small guard is fixed at the bottom of the slit inside the cover, which prevents the paper disc being tampered with by the insertion of any instrument for the purpose of unscrewing the nut that secures the same. The front of the casing fits over the other part like the cover of a box, and is secured to its place by a suitable lock. To the back of the casing is fixed a strong handle, of leather or other suitable material.

Secondly, this invention consists in fixing in any convenient manner, at each of the localities where the watchman or other person is required to visit, a box or case of metal or other suitable material of a corresponding internal size to the external diameter of the before-described instrument, which box has a lid or door to it capable of being locked. Inside this box, at the back of the same, a small metal type is fixed, projecting out in a horizontal direction. The mode of operation is as follows :

At the appointed time the watchman, holding the before described time-piece by the handle, inserts the same into the box, the exact required position of the time-piece inside the box being insured by studs fixed to the circumference of the time-piece, passing down grooves formed in the sides of the box. In pushing the time-piece forward the fixed type projecting from the end of the box will pass through the slit in the cover of the time-piece, and will print its letter, number, or character by means of the before-mentioned transfer paper on the back of that portion of the paper disc which is then in front of the slit. The type in each box is fixed at a different radial distance frem the centre, and is consequently imprinted

not only at a different circumferential position, but also at a different radial distance upon the back of the paper disc, which, when removed from the time-keeper, will consequently indicate, by the position of the imprint of the various types, upon the radial and annular divisions upon the back, the particular time at which the watchman or other person has visited each individual locality. The letters in the boxes of the various stations may be arranged in such a manner that they would form a particular word, printed in a peculiar curved direction when the various stations had been visited in correct rotation, and at the proper appointed times, and the word may be changed by altering the type without the knowledge of the watchman or other person, thus rendering it exceedingly difficult, if not impossible, for him to print the proper word in the proper curved direction upon the paper disc without visiting the various localities for this purpose, even supposing he had possessed himself of *fac similes* of the various type in the different boxes. A fresh paper disc is placed in the time-piece every day, or at any other interval of time when it is required to examine the duty performed, but the same discs of transfer paper will serve a number of times.

On the accompanying drawing is shown the construction of this improved portable tell-tale time-keeper, together with the type box for the same. Figure 1 shows a front view of the time-piece; figure 2 shows a side view; figure 3 shows an inside view of the cover removed; figure 4 shows a front view of the time-piece with paper disc, the cover being removed; figure 5 shows a back view of the paper disc; figure 6 shows a front view of the time-piece, with the paper disc and revolving plate removed; figure 7 shows a back view of the revolving plate; figure 8 shows a side view of the time-piece without the cover, showing the contrivance and key for locking the cover on the time-piece; figure 9 shows a front elevation of the type box when open; figure 10 shows a transverse section through the type box, and partly through the time-piece, which is inserted in the same to show the manner of action. The same letters of reference indicate the same parts in all the figures.

The casing *A* contains the mechanism of an ordinary watch, by which, when wound up by the end of the key *X* (shown at figure 8), acting upon the cap a^1 screwed upon the projecting

end of the spindle *a*, the toothed wheel *B* seen in figure 6, and in section at figure 10, is caused to revolve in the direction of the arrow. This wheel has a bush, *b*, formed on its centre, through which the spindle, *a*, passes, working loose in the same. It has also a small open barrel, b^1, formed upon it, into which a spiral spring, *c*, shown in blue lines, is placed, attached at one end to the side of the barrel, b^1, whilst the other end, projecting towards the centre of the barrel, as shown, has a slot formed in it, into which a small pin, *d*, on the boss of the under side of the revolving plate *D*, (shown detached at figure 7), hooks when this plate is in its place. The hole in the boss of this plate *D* fits over the bush *b* of the wheel *B*, and the boss rests upon a shoulder formed at the bottom of the bush *a* seen in Figure 10. The wheel *B*, as also as the plate *D*, are kept down upon the spindle *a* by the cap a^1 screwed upon the latter, the direction in which the cap is screwed on to the spindle being the same as that in which the spindle is turned for winding up the watch. The plate *D* being attached, as before described, to the spring *c*, is carried round by the wheel *B* in the direction of the arrow, a small stud d^2, upon the under side of the former, coming in contact with a stud b^2 fixed on the latter and the plate *D*, although it is by this arrangement capable of being pushed round in the contrary direction to the arrow, independently of the watch movement, yet, by reason of its attachment, as before described, to the spring *c*, it is caused, when released, to spring back into its original position, namely, with its stud d^2 resting against the stud b^2.

In order to support the circumference of the revolving plate when pressure is put upon it, a rim, *R*, or other support is fixed inside the casing underneath the plate. On the upper face of the plate *D* is formed a boss d^3 surrounding the hole through which the spindle *a* passes. This boss has a screw thread formed upon it to receive a nut *E*, serving to fix down firmly on the plate: firstly, a pad of cardboard or other suitable material, *F*, seen in section, in figure 10; secondly, upon this a disc of black or colored transfer paper *G*; and thirdly, a paper disc *H*, having in its upper face divisions and figures round its circumference resembling those of the dial of a watch as seen at figure 4, and upon its under face radial and annular division lines, as shown at figure 5. The radial lines marked 1, 2, 3, etc., at the circumference cor-

respond in position with the divisions marking the hours on the upper face of the disc, and serve for the same purpose; the figures on the upper and under face being, however, so arranged in relation to each other that the division marked 12 on the upper surface of the disc corresponds, in position with that marked 6 on the under face, 1 with 7, 2 with 8, and so on. The intermediate radial divisions upon the under face serve to indicate the quarter, half and three-quarters of each hour. Each of these divisions may, if requisite, be subdivided to any required extent. The annular divisions serve to indicate the different localities where the different impressions have to be taken, as will be more fully explained hereafter. The three discs *F*, *G*, and *H*, being fixed firmly down upon the revolving plate *D*, by the nut *E*, are caused to revolve with the same. In fixing on the paper disc *H*, previous to putting the instruments in the hands of the watchman or other person for use, it has to be placed in such a position relative to the casing *A*, that as nearly as practicable, the divisions on the upper face representing the exact time of the day at which it is put on, is situated at the notch a^3 formed on the edge of the casing *A*. This having been done, the cover *I*, of which a detached inside view is shown at figure 3, is placed over the casing *A*, covering the paper disc, as shown at figure 1. This cover has, firstly, a circular hole *i* formed in its face close to the edge, which hole corresponds in position with the notch a^3 in the edge of the casing, and, being covered with glass or horn, serves to observe the hour of the day or night by, as the figures on the paper disc pass beneath it, as shown at figure 1. The cover, *I*, has upon its face a second aperture or slit i^1, diametrically opposite the aperture *i*.

At the inner end of this slit is fixed, inside the cover, a small guard *J*, as seen in figure 3 and 10, the object of which is to prevent the nut *E* from being unscrewed by the insertion of any instrument through the slit for the purpose of tampering with the paper disc *H*. This aperture i^1 is furthermore covered on the inside by a piece of india rubber *K*, having a slit in it so as to admit freely of the insertion of the type fixed in the type boxes, but closing the aperture entirely when nothing is inserted.

It will be readily understood from the hereinbefore described arrangement of the paper disc *H*, that as the figures and divis-

ions indicating the hours are passing the aperture *i*, the divisions on the back of the disc bearing the same figures are passing the slit i^1.

The cover *I* on being placed over the casing *A*, is locked upon it in the relative position described by the contrivance shown in figure 8. A groove, *L*, is formed in the side of the casing *A*, corresponding in width with a stud, *M*, formed on the inside of the cover. This groove is formed with an elbow at right angles, as shown, into which elbow the stud *M* on the cover is made to pass, by turning the latter slightly round after being slid on to the casing. When the stud is in the elbow, a spring-bolt, *N*, which has before been pushed down the groove by the insertion of the stud *M*, shoots forward and locks the stud *M* in the elbow, and this secures the cover on to the casing. When it is desired to remove the cover, the end *x* of the key *X* is screwed on to a small spindle attached to the bolt *N*, and by screwing the same up, withdraws the bolt, when the cover, on being turned back into its former position, may be withdrawn. A second stud, M^1, is formed on the opposite side of the cover *I*, fitting into a corresponding groove on the casing *A*, but without any locking arrangement. A handle, *O*, of leather or other suitable material, is fixed at the back of the casing, *A*, to hold the time-piece by. In figure 9 is shown the type box, *P*, made of iron or other suitable material, with a door or lid P^1, hinged to it, which is shown open on the drawing, but which is ordinarily kept closed, having a lock *p*, the key of which is in the hands of the watchman or other person. It is attached to a wall or other suitable object at the locality which the watchman has to visit, by means of screw, *Q Q*, passing through the back of the box, and by preference situated inside the same, so that they cannot be tampered with when the box is closed.

The external form of the box can be made of any desired configuration, but the inside of the same is made circular and of such a diameter that the projecting rim of the cover of the time-piece just fits into it.

In the back of the box is fixed a type, *T*, projecting forward as shown in figure 10, and having formed upon its extremity a letter, figure or mark. The distance at which this type is fixed from the centre of the box is varied in the different boxes at the various localities which have to be visited, the position

of each type corresponding with one of the annular divisions upon the back of the paper dial *H*, and by preference a number of holes, arranged in a radial line and corresponding with all the annular divisions on the paper disc, are made in the back of each box, as shown, so that the position of the type may be varied from time to time. Or in some cases I form a slot instead of a number of holes and fix the type in the same by means of screwed nuts. The duty of this type as before stated, is to pass through the slit i^1 in the cover, *I*, of the time-piece, and impressing upon the face of the paper disc *H*, to cause by the agency of the transfer paper *G*, its letter, mark or number to be imprinted upon or between such radial divisions upon the back of the disc as are at the time in front of the slit, i^1, as also upon the annular division corresponding with the position of the type. In order to insure the time-piece being inserted into the type box in the proper position, as shown at figure 10, so that the type, *T*, shall pass through the slit i^1, three or more grooves q, q, q, are formed in the sides of the type box, into which three studs q^1, q^1, q^1, fixed in corresponding positions on the circumference of the time-piece pass; these grooves and studs, being so arranged that the latter will not pass into the former, except when the time-piece is in proper position.

As it is essential that the studs, q^1, should fit into the grooves q as accurately as possible, so as to insure the imprint of the type in the exact required position in the disc, the grooves q are widened out at the outer end as shown, so as to facilitate the introduction of the studs into them. In order to keep the face of the time-piece parallel with the back of the type box, when the impression is being taken, other small studs s, s, s, are fixed on the face of the cover *I*, which studs, when the time-piece is inserted, come in contact with the back of the type box. Although, in the arrangement on the accompanying drawing, the paper disc or dial *H*, is intended to revolve once in the twelve hours, and has consequently to be removed at the end of that time, yet it is evident that by a different arrangement in the mechanism of the clockwork which causes the disc to rotate, and by a different subdivision of the two faces of the paper disc, it may be arranged so as to revolve once during any other optional subdivision of time greater or less than twelve hours. From the before described arrangement

of the time-piece and type box, the manner of employing the same will be readily understood. A number of type boxes having in the first instance been fixed at the different localities which the watchman, inspector, overlooker, or other person has to visit periodically, the timepiece, after having been wound up and a paper dial with transfer paper beneath having been fixed in the same, as before described, and the cover locked on, is given into the watchman's or other person's hands, such person observing the time at which he has to visit a certain locality by means of the figures of the paper dial as they pass the aperture *i*, goes to the type box fixed at such locality, opens the door of the same, inserts his time-piece, as shown in figure 10, on the drawing, and impresses the character of the type on the back of the dial by the aid of the transfer paper, the radial division upon which such impression is situated indicating the time when, and the annular division upon which it is situated, indicating the locality where such impression is made. The watchman or other person then, in a similar manner, proceeds at the appointed intervals of time to the various other localities that he has to visit in rotation, taking at each place the impression of the type which is fixed there. At the end of the time during which he is on duty, the watchman delivers his time-piece over to master or inspector appointed for that purpose, who, on removing the paper dial from the same, can see at a glance from the impressions on the back, whether all the various localities have been visited at the proper times and in proper succession. Thus, for example, if the watchman had visited at equal intervals of time, eight different localities within an hour, then there would be eight different impressions of type arranged as shown at *W*, figure 5, which type may be arranged as shown to form a particular word. If he then had reposed for an hour and afterwards revisited the same localities in the same succession, but had omitted two of such localities, then the impression would be as at *Y*, two impressions being wanting. If, again he had to visit such eight localities successively at intervals of half an hour, commencing at twelve o'clock and terminating at half-past three, then the impression would be arranged as at *Z*.

The security from fraud in this improved arrangement of time-piece is insured, firstly, through the inability of the watch-

man to turn the paper dial, so as to take impressions upon the right divisions at other than the appointed times, as in endeavoring to do so he will, at the same time, move the plate *D*, which, when released will, by the before described arrangement, spring back into its proper position, carrying the paper dial with it. Secondly. Presuming that he had procured a number of loose type corresponding with the type in the various boxes, he could not tell in what manner they had been arranged in such boxes by the inspector, until he had visited the various localities, and even then it would be extremely difficult for him to make the impressions of the counterfeit type to correspond exactly in position with the impressions taken in the proper manner, and would therefore be easily detected. The paper dials being of small dimensions and on thin paper, may, after having been removed from the time-piece by the inspector, be readily transmitted through the post to the proprietor of the factory or other locality, should he be absent at the time, and thus afford him evidence that the works were properly overlooked.

These dials may be dated and filed, and be used subsequently as evidence as to whether the premises had been properly overlooked or watched at a certain date.

Having now described the nature of this invention, as communicated to me by my foreign correspondent, I wish it to be understood that I do not claim generally the construction of portable tell-tale time keepers having removable rotating dials upon which impressions are made, neither do I limit myself to the precise form of the improved time-piece and type boxes, as shown on the accompanying drawing, but what I claim is:

Firstly—The construction and employment of portable tell-tale time-keepers having no fixed dial and pointers, as in ordinary time-keepers, but in which a removable paper disc fixed upon and revolving with a plate actuated by clock work, serves both to indicate the time to the watchman or other person, and to register the duties performed by such person.

Secondly—The construction and employment of portable tell-tale time-keepers, in which the impressions of the various type fixed at the various localities are made upon the revolv-

ing paper dial by the agency of black or colored transfer material.

Thirdly—The construction and employment of "type boxes" fixed at the various localities, containing a fixed type for making the impression upon the paper dial of the portable time-keepers, such time-keepers being for that purpose inserted into these boxes, which type boxes, when not used, are secured by a door or lid.

Fourthly—The arrangement of the fixed type in the various type boxes at different distances from the centre, and the formation of annular divisions upon the back of the paper dial corresponding with the positions of such type, so that the impression of each separate type is made upon a different annular division on the paper dial, as hereinbefore described.

Fifthly—The arrangement hereinbefore described for attaching the revolving plate *D* to the movement of the time-keeper.

Sixthly—The method hereinbefore described of fixing the paper dial, transfer paper and pad on to the face of the plate *D*, by means of a screwed nut *E*.

Seventhly—The employment of a guard, *J*, for protecting the nut *E*, so as to prevent its being tampered with.

Eighthly—The contrivance for locking the cover *I* on to the casing *A* of the time-piece in the manner hereinbefore described by means of a spring bolt *N*.

In witness whereof, I, the said Thomas Buckney, have hereunto set my hand and seal this eleventh day of November, in the year of our Lord one thousand eight hundred and sixty-two.

THOMAS BUCKNEY. (L. S.)